DOCUMENT RESUME

ED 450 038 SO 032 531

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|---|---|
| TITLE | People v. Rose: Issues of Poisoning, Assault with a Deadly Weapon and Search and Seizure. Official Materials for the California Mock Trial Program. |
| INSTITUTION | Constitutional Rights Foundation, Los Angeles, CA. |
| PUB DATE | 1999-00-00 |
| NOTE | 82p.; "Featuring a pretrial argument on the Fourth and Fourteenth Amendments of the U.S. Constitution." Co-sponsored by California Department of Education, State Bar of California, California Young Lawyers Association, and Daily Journal Corporation. Developed by Marshall Croddy, William C. Hayes, Andy Schwich, Eden Kusmiersky, and Amy McDougal. |
| AVAILABLE FROM | Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005; Tel: 213-487-5590; Fax: 213-386-0459; Web site: http://www.crf-usa.org. |
| PUB TYPE | Guides - Classroom - Teacher (052) |
| EDRS PRICE | MF01/PC04 Plus Postage. |
| DESCRIPTORS | Citizenship Education; Controversial Issues (Course Content); Educational Benefits; High Schools; Higher Education; *Law Related Education; Simulation; *Social Problems; Social Studies |
| IDENTIFIERS | *Mock Trials |

ABSTRACT

Each year the Constitutional Rights Foundation (CRF) seeks to create a mock trial that addresses serious matters facing young people today. In recent times, the actions and behaviors of student groups on high school and college campuses have become major stories in the national media. Incidents of hazing and peer pressure have raised questions about harassment, depression, self esteem, date rape, responsibility, and drug and alcohol abuse. By affording students an opportunity to wrestle with societal problems within a structured form, CRF strives to provide a powerful and timely educational experience. The goal is for students to conduct cooperative, vigorous, and comprehensive analysis of these program materials, with the guidance of teachers and coaches. The lessons and resources included in the packet of program materials offer supplementary methods to address many of the topics contained in "People v. Rose." Program materials are divided into the following sections: "Program Objectives"; "Code of Ethics"; "Introduction to 1999-2000 California Mock Trial Program"; "Classroom Materials--Student Packet"; "Introduction to 1999-2000 California Mock Competition"; "Fact Situation"; "Pretrial Motion and Constitutional Issue"; "Witness Statements"; "The Form and Substance of a Trial"; "Team Role Descriptions"; "Procedures for Presenting a Mock Trial Case"; "Diagram 'A Typical Courtroom'"; "Mock Trial Simplified Rules of Evidence"; and "Official Judge, Scorer and Teacher Information Packet." (BT)

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# CONSTITUTIONAL RIGHTS FOUNDATION

# PEOPLE V. ROSE

**ISSUES OF POISONING, ASSAULT WITH A DEADLY WEAPON AND SEARCH AND SEIZURE**

Featuring a pretrial argument on the
Fourth and Fourteenth Amendments of the U.S. Constitution

SO 032 531

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**OFFICIAL MATERIALS FOR
THE CALIFORNIA MOCK TRIAL PROGRAM**





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| | | | |
|---|---|---|---|
| Alameda | Los Angeles | Riverside | San Mateo |
| Butte | Madera | Sacramento | Santa Barbara |
| Contra Costa | Marin | San Benito | Santa Clara |
| El Dorado | Mendocino | San Bernardino | Santa Cruz |
| Fresno | Monterey | San Diego | Shasta |
| Imperial | Napa | San Francisco | Stanislaus |
| Inyo | Orange | San Joaquin | Tulare |
| Kern | Placer | San Luis Obispo | Ventura |
| | | | Yolo |

The California Mock Trial Competition is a program of Constitutional Rights Foundation and the California State Department of Education and is additionally sponsored by the State Bar of California, the California Young Lawyers Association, and the Daily Journal Corporation.



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## PROGRAM OBJECTIVES

**For the students**, the Mock Trial Program will:

1. Increase proficiency in basic skills (reading and speaking), critical thinking skills (analyzing and reasoning), and interpersonal skills (listening and cooperating).

2. Develop an understanding of the link between our Constitution, our courts, and our legal system.

3. Provide the opportunity for interaction with positive adult role models in the legal community.

**For the school**, the program will:

1. Provide an opportunity for students to study key concepts of law and the issues of poisoning, assault with a deadly weapon, and search and seizure.

2. Promote cooperation and healthy academic competition among students of varying abilities and interests.

3. Demonstrate the achievements of young people to the community.

4. Provide a hands-on experience outside the classroom from which students can learn about law, society, and themselves.

5. Provide a challenging and rewarding experience for teachers.

## CODE OF ETHICS

**At the first meeting of the Mock Trial team, this code should be read and discussed by students and their teacher.**

**All participants in the Mock Trial Competition must follow all rules and regulations as specified in the California Mock Trial materials or disseminated by CRF staff. Failure of any member or affiliate of a team to adhere the rules may result in disqualification of that team.**

**All participants also must adhere to the same high standards of scholarship that are expected of students in their academic performance. Plagiarism* of any kind is unacceptable. Students' written and oral work must be their own.**

**In their relations with other teams and individuals, students must make a commitment to good sportsmanship in both victory and defeat.**

**Encouraging adherence to these high principles is the responsibility of each team member and teacher sponsor. Any matter that arises regarding this code will be referred to the teacher sponsor of the team involved.**

***Webster's Dictionary defines plagiarism as, "to steal the words, ideas, etc. of another and use them as one's own."**

## 1999-2000 CALIFORNIA MOCK TRIAL PROGRAM

Each year, Constitutional Rights Foundation (CRF) seeks to create a mock trial that addresses serious matters facing young people today. By affording students an opportunity to wrestle with large societal problems within a structured forum, we strive to provide a powerful and timely educational experience. It is our goal that students will conduct co-operative, vigorous and comprehensive analysis of these materials, with the careful guidance of teachers and coaches.

In recent times, the actions and behaviors of student groups on high school and college campuses have become major stories in the national media. Incidents, some fatal, involving peer pressure and hazing have raised serious questions regarding harassment, depression, self-esteem, responsibility, date rape, and drug and alcohol abuse.

The lessons and resources included in this packet offer supplementary methods to address many of the topics contained in *People v. Rose*. Additional materials covering the subjects of violence and crime are also available. We hope that through participation in the lessons and the Mock Trial Program, students will develop a greater capacity to deal with these important issues.

### CLASSROOM MATERIALS
**For Activities, see Teacher Packet, pages 54-55**

**LESSON 1: Hazing**

- In 1984, a student at American International College (MA) died as a result of a marathon drinking hazing for his fraternity.

- In 1990, a University of Northern Colorado baseball player broke his neck after attempting to slide into a mud puddle during a team initiation. The baseball coach called the incident "horseplay," rather than hazing.

- In 1999, the North Thurston School District (WA) began a study of student behaviors resembling hazing as a result of several incidents on the school campus.

In the aftermath of the tragedy at Columbine High School (CO) in April 1999, incidents of student harassment have become major stories in the national media. The constant ridicule and humiliation encountered by several students at Columbine seemed to be a contributing factor in their violent and deadly rage. Reports of hazing activities in high schools are on the rise nationwide.

Hazing can be defined in a general sense as harassment that includes meaningless, difficult, or humiliating tasks. A more specific definition relates to the practice of initiation, as into a college fraternity or sorority, by requiring humiliating performances from or playing rough practical jokes upon others.

Traditionally, hazing has been associated with the fraternity and sorority systems on many college campuses. For many years, however, hazing incidents have been documented by various organizations, including the military, athletic teams, marching bands, religious cults, and professional schools.

As of August 1999, legislation dealing with hazing has been enacted in 40 states and is pending in one other state. According to the California law, hazing is defined as "any method of initiation or orientation into a student organization or any pastime or amusement engaged in with respect to such an organization which causes, or is likely to cause, bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm, to any student or other person attending any school, community college, college, university or other educational institution in this state; but the term hazing does not include customary athletic events or similar contests or competitions."

The California statute further stipulates that individuals engaged in hazing may be guilty of a misdemeanor offense, punishable "by a fine of not less than one hundred dollars ($100), nor more than five thousand dollars ($5000), or imprisonment in the county jail for not more than one year, or both."

A difficult task in understanding hazing is defining and identifying hazing activities. StopHazing.org, an anti-hazing organization, has broken acts of hazing into two categories: subtle hazing and harassment hazing.

According to StopHazing.org (www.stophazing.org), subtle hazing includes activities that ridicule, humiliate, or embarrass individuals. Harassment hazing, however, is defined by that organization as any activity that causes mental anguish or physical discomfort to a pledge. Examples of harassment hazing may include verbal abuse, forced use of alcohol, paddling in any form, creation of excessive fatigue, requiring pledges to wear ridiculous costumes, any form of questioning under pressure, and other degrading or humiliating activities.

Many colleges and universities across the United States have stepped up anti-hazing programs in response to both recent legislation and public outcry. The national organizations of all the major fraternities and sororities have issued strong anti-hazing warnings against the chapters nationwide. Several organizations have worked to develop safe alternatives to hazing practices. Some of the suggested activities include academic mentorships between upperclassmen and underclassmen and team-building retreats or seminars to develop a sense of cohesiveness for the organization. Many frat chapters on college campuses are urging pledges to get involved with campus and community service projects, or to plan fund-raisers for local charitable organizations.

But despite the organized efforts of various anti-hazing organizations and recent legislation, the practice of hazing continues to be a part of some professional and social groups. Proponents of hazing argue that as long as no one gets hurt, hazing is nothing more than good clean fun. They argue that hazing is an effective way to establish control, to teach respect, and to develop discipline for individuals. Athletic teams, in particular, justify hazing as a necessary activity in the process of team building, an essential component to their success on the field or court. Another line of reasoning in support of hazing suggests that if someone agrees to participate in the activity, it cannot be considered hazing.

Psychologists recognize that low self-esteem and the need to be accepted by one's peers are powerful forces in the minds of teenagers throughout the country. It is this desire to be a part of the "in" crowd, or to be accepted by the group or team, that forces students to make difficult decisions about hazing. For many of them, the struggle to do what is necessary to become a member in a group far outweighs their sense of duty or obligation to report that incidents or activities involving hazing take place.

In 1988, national fraternity Sigma Alpha Epsilon adapted a series of questions that can be used to determine whether or not an activity is hazing:

- *Is alcohol involved?*
- *Will active/current members of the group refuse to participate with the new members and do exactly what they're being asked to do?*
- *Does the activity risk emotional or physical abuse?*
- *Is there risk of injury or a question of safety?*
- *Do you have any reservations describing the activity to your parents, to a professor or a university official?*
- *Would you object to the activity being photographed for the school newspaper or filmed by the local TV news crew?*

If the answer to any of these questions is "yes," the activity is probably hazing.

**Questions for Discussion:**

1. What is hazing? Why do you think people participate in hazing?
2. Do you agree or disagree with the laws against hazing?
3. How serious a problem is hazing on your campus?

**LESSON 2: Rohypnol or "Roofies"**

In the mid-1980's, a designer drug known as Ecstasy became the drug of choice for many young people throughout the United States. Chemists create designer drugs to produce effects similar to illegal drugs. The government did not control the manufacture of Ecstasy, yet the drug was readily available over the counter in many nightclubs, especially in Texas. A combination of synthetic mescaline and amphetamine, Ecstasy produces hallucinations and can lead to permanent brain damage and death from overdose. In 1985, the federal government moved Ecstasy to Schedule III, prohibiting its legal sale.

By the mid-1990's, flunitrazepam – marketed under the trade name Rohypnol (pronounced row HIP nole) – made its way onto the drug scene from California to Florida. Between 1985 and March 1998, the Drug Enforcement Administration (DEA) recorded approximately 4,500 cases involving Rohypnol; about 85% of the cases occurred either in Florida or Texas. Throughout the country, Rohypnol has surfaced as a drug of abuse among high school and college youth in the United States. Of particular concern to federal and state health officials is that the drug has been used as an aid in committing sexual assaults, in addition to the perception among users that it is harmless.

Rohypnol is not legally available in the United States, but it is an approved medicine in most parts of the world. It is produced and sold legally by prescription in Europe and Latin America. Rohypnol is smuggled into and transported within the United States through the mail or delivery services. It has been encountered by law enforcement agencies across the Sun Belt, especially in Florida and Texas. Much like marijuana and cocaine trafficking, Rohypnol is delivered into South Florida primarily from Colombia via international mail services or commercial airlines, while distributors in Texas reportedly travel to Mexico to obtain the drug.

Rohypnol is a pill usually prescribed for short-term sleeping disorders and as a sedative. It is a tranquilizer like Valium but is ten times more potent. The drug produces sedative effects, including amnesia, muscle relaxation, and the slowing of psychomotor performance. Rohypnol's effects begin within 30 minutes, peak within two hours and may last for up to eight hours or more, depending on the dose. Adverse effects of Rohypnol may include slurred speech, decreased blood pressure, sweating, memory impairment, drowsiness, dizziness, confusion, gastrointestinal disturbances, and urinary retention.

Known by street names like "roofies" or "Mexican Valium," Rohypnol is used widely in Texas where it is popular among high school students. It is reported to be readily available in the Miami area, and health officials have stated that it is South Florida's fastest growing drug problem. Reports from law enforcement agencies indicate that the largest and fastest growing group of Rohypnol users is high school students who take the drug with alcohol or use it after cocaine ingestion. Adolescents, particularly in Florida, have been known to grind up the tablets and snort the powder to obtain an euphoric effect. Students say that they use Rohypnol as a cheap way to get drunk and as a cure for alcohol hangovers. College students using Rohypnol report mixing it with beer to enhance the feeling of drunkenness. Throughout the country, Rohypnol is becoming known as a club drug, and can often be purchased for less than $5 per pill.

Law enforcement officials are alarmed that Rohypnol is one of a number of substances that are categorized as "date rape" drugs. The tranquilizer is used to physically and psychologically incapacitate women targeted for sexual assault. Rohypnol is secretly administered to unsuspecting women, usually by being mixed in their drinks. With the onset of unconsciousness or amnesia, victims cannot recall events from the previous evening.

In an effort to address the emerging Rohypnol problem, Congress passed the Drug-Induced Rape Prevention and Punishment Act of 1996. The law established a 20-year maximum sentence for the use of any controlled substance, including Rohypnol, to aid in committing a violent act like sexual assault

Many young people mistakenly believe that Rohypnol is harmless. A common misperception among users is that, as the drug is typically sold in its original bubble packaging, it is unadulterated, and therefore safe. By 1998, at least six counterfeit versions of Rohypnol had been detected in the United States. Physicians warn that the use of Rohypnol may lead to physical

and psychological dependence. Although a lethal overdose is unlikely, continued use of Rohypnol will result in withdrawal symptoms ranging from headache and muscle pain to hallucinations and convulsions. Further, although the drug is classified as a depressant, it can induce excitability or aggressive behavior in some users.

According to some health officials, the most serious danger is that the trend of combining Rohypnol with other substances not only can lead to increased exposure to and experimentation with harder drugs, but could also be lethal. The combination of Rohypnol and alcohol in the body has the potential of causing sedative and hypnotic effects that could result in death.

Recent seizures and anecdotal reporting indicate that distribution and abuse of Rohypnol are increasing in the United States, especially in southern and southwestern states. DEA officials theorize that the distribution and abuse of Rohypnol, in all likelihood, will continue to increase among abusers of other illicit drugs, including high school students.

**Questions for Discussion:**

1. What are some similarities between Ecstasy and Rohypnol? Which drug do you think is more dangerous?
2. Should state and federal law enforcement agencies increase their efforts to stop Rohypnol from entering the United States? Why or why not?
3. Do you agree or disagree with the Drug-Induced Rape Prevention and Punishment Act of 1996?

**Related Issues, Hotlines and Web Sites**

**INHALANTS** are another extremely dangerous form of substance abuse prevalent among American youth. A user can die on the first use of inhalants. Other health risks caused by inhalants include damage to the heart, kidney, brain, liver, bone marrow, and other organs.

Inhalant use is commonly linked with trouble in school, like failing grades, chronic absences and general apathy. Other signs of inhalant use include:

- Paint or stains on body or clothing
- Spots or sores around the mouth
- Red or runny eyes or nose
- Chemical breath odor
- Drunk, dazed or dizzy appearance
- Nausea, loss of appetite
- Anxiety, excitability, irritability

For more information on inhalants, contact the **National Inhalant Prevention Coalition** (800.269.4237; www.inhalants.org).

**Center for Substance Abuse Treatment (CSAT)**
800.662.HELP

**National Clearinghouse for Alcohol & Drug Abuse**
800.SAY.NOTO

**Rape, Abuse & Incest National Network**
800.065.HOPE

At first he'll begin ye
With a Pipe of Virginie [tobacco]
Then search every Shop in his Rambles.
* * * * *
Your Cellars he'll range
Your Pantry and Grange [granary];
No Bars Can the monster restrain.
- anonymous ballad (1733)

The "monster" in the ballad above refers to the almost unlimited government searches and seizures common in 18th century England. The legal basis for such searches and seizures was the general warrant. This court document named no specific person, place, or thing to be searched or seized. Instead, it simply allowed customs officers, tax collectors, and other agents of the king to look anywhere and take anything at their discretion.

While the English Parliament and courts did place some limits on general warrants, the real effort to abolish them occurred in America. After the American Revolution, the Fourth Amendment of the Bill of Rights guaranteed Americans that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

**The General Warrant**

The idea of "a man's house is his castle," the right of a person to be protected in his home from arbitrary invasions by the government, existed early in English history. Nevertheless, during the Middle Ages, Parliament began to enact general search and seizure laws. In 1335, Parliament authorized "good men" to search for counterfeit coins in the houses of the king's subjects. During the 16th century, craft guild officers with "reasonable cause of suspicion" could enter anyone's home looking for illegally made goods.

In the 17th century, Parliament passed laws allowing government agents to search for and seize religious and political publications considered to be "seditious... scandalous... popish... contrary to the doctrine and discipline of the Church of England... against the state... malignant... [or] offensive."

The first important legal challenge to arbitrary government searches took place in 1604. In this case, the judges ruled, "The house of any one, is not a castle or privilege but for himself" Thus, guests and others staying in a person's house were not protected. Moreover, the court stated that even the owner could not be secure from searches in "cases where the King is party." Since the king represented virtually all government authority, these cases could involve almost anything.

In 1649, King Charles I was beheaded after a Civil War between the king's men and the forces of Parliament. The monarchy was then replaced by the rule of Parliament. Despite this change in government, the practice of generalized searches continued. One critic damned Parliament's agents as invaders who break "in pieces the commoner's doors, burst open their locks... ransack their houses, plunder, rob, steal, and feloniously bear away their proper goods and livelihoods."

After the monarchy was restored in 1660, officials had to swear before a judge that they had cause for a general warrant. In some cases, general warrants could only be used for daytime searches. Excessive force was prohibited. Sometimes, a time limit on the warrant was imposed. Still, the general warrants did not name specific persons, places, or objects to be searched for or seized.

Whenever Parliament passed a new type of tax, the use of general warrants expanded. In 1763, the Cider Act was passed. This law led to widespread searches of homes where individuals commonly made their own cider to avoid the tax. A well-known English statesman, William Pitt the Elder, expressed his fear that such tax laws would eventually reach into "the domestic concerns

of every private family." Others described the tax collectors searching for illegal cider as "the lowest... reptiles." In spite of this opposition, the campaign to repeal the Cider Act failed in Parliament.

**Writs of Assistance**

Under the Fraud Act of 1662, a type of general warrant called a "writ of assistance" granted broad search and seizure powers to government customs officers. Writs of assistance typically authorized these officers "to break into any shop or place suspected" and "to break open doors, chests, trunks, and other packages" in their search for untaxed goods smuggled into the country. Each writ of assistance was good from the day it was issued until six months after the death of the king.

The most famous attack against the writs of assistance occurred not in England, but in the English colony of Massachusetts Bay. Charles Paxton, a customs officer in Boston, received a writ of assistance from the Massachusetts Superior Court in 1755. Following the death of King George II in 1760, Paxton and several other customs officers applied for new writs. However, a group of Boston merchants challenged the application in court.

The legal arguments in this case began before the Massachusetts Superior Court in February 1761. James Otis, the king's chief lawyer in Boston, resigned his position to help represent the Boston merchants. Otis condemned the general warrants by reminding the court of the Englishman's ancient right of privacy:

> Now one of the most essential branches of English liberty, is the freedom of one's house. A man's house is his castle; and while he is quiet he is well guarded as a prince in his castle. This writ, if it should be declared legal, would totally annihilate this privilege.

Otis continued by declaring that writs by their nature were temporary, "but these monsters in the law live forever." In his conclusion, Otis urged the court "to demolish this monster of oppression, and to tear into rags this remnant of . . . tyranny."

The judges suspended the case until they could check on the practice of issuing writs of assistance in England. In November, the court met again and decided unanimously in favor of granting the writs to Paxton and the other Boston customs officers. Over the next few years, the arguments against writs of assistance raised by James Otis contributed to the growing list of the grievances that finally resulted in the American Revolution.

**"Wilkes and Liberty!"**

Two years after James Otis argued against the writs of assistance in Massachusetts, a member of Parliament became the victim of a general warrant. John Wilkes was a "burr under the saddle" of King George III and his ministers. Wilkes founded and wrote a journal, *The North Briton*, that mercilessly ridiculed the king's government headed by Lord Bute. In April 1763, Bute resigned from office partly because of Wilkes' constant criticisms.

George Grenville replaced Lord Bute as the king's new prime minister. When King George sent a speech to Parliament, Wilkes saw an opportunity to embarrass the new government. Taking care to note that the king's speech was actually written by the prime minister, as was the custom, Wilkes wrote a scathing article in *The North Briton*. He accused the Grenville government of lying, resorting to bribery, and becoming "the tools of despotism and corruption." King George took these words as a personal insult and urged his ministers to arrest "that devil Wilkes."

Using their own authority as the King's secretaries of state, Lords Halifax and Egremont issued a general warrant. The warrant called for the arrest of "the authors, printers and publishers of seditious [revolutionary] and treasonable paper, entitled *The North Briton*."

On the morning of April 30, agents carrying the general warrant arrested Wilkes and took him to the home of Lord Halifax. Halifax and Egremont attempted to question Wilkes but he refused to cooperate. Soon, Wilkes found himself locked in the Tower of London.

In the meantime, the agents of Halifax and Egremont searched Wilkes' home and seized a sackful of his writings. The agents also searched the houses of Wilkes' printers and others

associated with *The North Briton*. In addition to Wilkes, nearly 50 other persons were arrested. One of those taken into custody was at one time Wilkes' master printer, but he had not been employed by *The North Briton* for several months. All of these searches, seizures, and arrests resulted from the single general warrant issued by Halifax and Egremont.

Early in May, Wilkes was brought before Chief Justice William Pratt of the Court of Common Pleas. Wilkes denounced his arrest under the general warrant and demanded that the court decide once and for all "whether English liberty shall be a reality or a shadow."

Chief Justice Pratt was sympathetic to Wilkes' arguments against the general warrant. But he decided to release Wilkes on the grounds that as a member of Parliament, he was immune from arrest in his case. After his release, Wilkes was escorted home by thousands of Londoners cheering and shouting, "Wilkes and liberty!"

Wilkes was not finished with those who had caused his arrest. He and a number of others caught up in the general warrant dragnet sued everyone responsible for it, except the king. Chief Justice Pratt again agreed with Wilkes in his lawsuit against Lord Halifax. Pratt ruled that general warrants were "contrary to the fundamental principles of the constitution." The chief justice then ordered Lord Halifax to pay Wilkes 1,000 English pounds.

The lawsuits brought against Halifax and other members of the government did not end the use of general warrants in England. The courts concluded that general warrants issued simply on the authority of government officials, as in Wilkes' case, were illegal. But general warrants, including writs of assistance, would be permitted if they were based on acts of Parliament. Despite an attempt in Parliament in 1766 to abolish these warrants, they remained alive in England. It took a revolution across the Atlantic 10 years later to kill the general warrant monster first in America and later in England itself.

## 1999-2000 MOCK TRIAL COMPETITION

This packet contains the official materials required by student teams to prepare for the 19th Annual California Mock Trial Competition, sponsored and administered by Constitutional Rights Foundation. The co-sponsors of the competition are the California Department of Education, the State Bar of California, the California Young Lawyers Association, and the Daily Journal Corporation.

Each participating county will sponsor a local competition and declare a winning team from among the competing high schools. The winning team from each county will be invited to compete in the state finals in Sacramento, March 31-April 2, 2000. In May 2000, the winning team from the state competition will be eligible to represent California at the National High School Mock Trial Championship in Columbia, South Carolina.

The Mock Trial is designed to clarify the workings of our legal institutions for young people. In the Mock Trial, students portray each of the principals in the cast of courtroom characters, including counsel, witnesses, court clerks, and bailiffs. As student teams study a hypothetical case, conduct legal research, and receive guidance from volunteer attorneys in courtroom procedure and trial preparation, they acquire a working knowledge of our judicial system.

As in recent years, a pretrial motion is included as part of the case. The pretrial motion has a direct bearing on the evidence allowed in the trial itself. In both the pretrial motion and the trial, students present their cases in court before actual attorneys and judges. As teams are unaware of which side of the case they will present until shortly before the competition begins, they must prepare a case for both the prosecution and defense. All teams must present both sides at least once.

**Because of the differences that exist in human perception, a subjective quality is present in the scoring of the Mock Trial, as with all legal proceedings. Even with rules and evaluation criteria for guidance, no judge or attorney scorer will evaluate the same performance in the same way. While we do everything possible to maintain consistency in scoring, every trial will be conducted differently, and we encourage all participants to be prepared to adjust their presentations accordingly.**

## CALIFORNIA MOCK TRIAL FACT SITUATION

San Domino High School is a typical three-year high school. Like many high schools, it has cliques. Some students group together because they like the same music, some because they like to dress the same, and others because they share the same hobbies. There are the athletes, the academics, the class clowns, the artists, and so on.

Then there is the so-called "popular crowd." All of the members of the popular crowd are part of a banned social club that is not officially recognized by the school. This year, the club is composed of 35 young men and women. They call themselves Sigma Zeta Zeta Pi. Although an informal group, it has been around for decades and is modeled after the old college campus frat system, including traditions, rituals and ceremonies long since discarded by college groups – they even use Greek symbols as their logo. The members pride themselves on only admitting the elite, the so-called "best of the best," and thus the group is considered to be very exclusive.

At the start of each school year, members of the group scout out the 10th graders (usually 15- and 16-year-olds) they feel would fit into their group. They then invite this select group to "rush" (a three-week time period giving everyone an opportunity to get to know one another at various social gatherings). When rush is completed, there is yet another stage of elimination, when the senior members of the club identify the even more exclusive "pledge class." The students who accept the invitation to pledge begin an additional six-week season, during which they are forced to serve the members of the club at will and do whatever they are told. Unlike the contemporary college frat system, which has adopted strong anti-hazing policies, Sigma Zeta Zeta Pi prides itself on the severity and originality of its hazing practices. These activities are conducted in direct violation of California Education Code Section 32051 and San Domino High's policy prohibiting hazing of any type, on or off campus. In fact, San Domino High specifically prohibits students from participating in Sigma Zeta Zeta Pi activities.

This year's Sigma Zeta Zeta Pi senior members included President Cory Jones and Rush Chair René Guerrero. As the top of the club chain of command, they had the last word on the membership selection process. Sam Rose and Cameron Bird were two of this year's pledges. Sam was new in town, whereas Cameron's family had lived in San Domino for some time. In fact, Cameron was a legacy to Sigma Zeta Zeta Pi (a pledge who had been asked to join because an older sibling or close relative was or had been a member). Cameron's older brother, Hunter, who had graduated from San Domino the previous year, had been a particularly well-liked member of the club.

Every pledging season concludes with Hell Night at Sunset Park. This year, all of the members showed up for Hell Night, and even some alumni participated. The night was going as planned, starting with the pledges reciting the Club Motto and singing the Club Anthem, followed by swatting the pledges with paddles, forcing them to drink cup after cup of alcohol, dousing them with ketchup and mustard, and making them swallow live goldfish. Humiliating, nonsensical awards were given to some of the pledges, including the "Least Likely to Succeed" award, a black bowling ball, which was given to Sam. The officers warned that this was just the beginning and the agony would only get worse. The Toasting of the Officers was the midway point of Hell Night, when the five current officers of the club were each toasted by last year's officers. All members had their own, personalized steins engraved with their names and the club's Greek symbols.

About 30 minutes after the toasting, the pledges were ordered to recite the alphabet backwards. Halfway through the alphabet, Cory experienced extreme chills, and René felt

a high temperature. Both became nauseous and dizzy. By the time the alphabet was finished, Cory and René both had blacked out. The police, an ambulance service and other emergency crews were immediately called to the scene. Upon their arrival, the police cancelled Hell Night, issued appropriate citations for underage drinking, and called all of the students' parents to take them home. They suspected that the victims had been poisoned. In the hospital, both victims identified Sam as the primary suspect for the crime. Following the police investigation, Sam was arrested and charged with poisoning drink, aggravated assault, and drug possession. Cory and René experienced ongoing symptoms.

**CHARGES:**

The prosecution charges Sam Rose with three counts:

Count 1- Poisoning or adulterating drink (California Penal Code, Section 347)

Count 2 - Assault with a Deadly Weapon or By Means of Force Likely to Produce Great Bodily Injury (California Penal Code, Section 245)

Count 3 - Drug Possession (California Health & Safety Code, Section 11377)

**EVIDENCE:**

Only the following items may be introduced at trial. The prosecution is responsible for bringing:

1. A faithful reproduction of the map of the crime scene, the Upper Picnic Area of Sunset Park, which appears in this packet. The reproduction should be no larger than 22" x 28".
2. A faithful reproduction of the search warrant for the Rose apartment, which appears in this packet. The reproduction should be no larger than 22" x 28".
3. A faithful reproduction of the screen saver from the Rose computer, which appears in this packet. The reproduction should be no larger than 22" x 28".

**STIPULATIONS:**

Prosecution and defense stipulate to the following:

1. According to California Health & Safety Code, Section 11057, Rohypnol is defined as a Schedule IV Drug.

2. Sam is being tried as an adult. The age of the defendant is not an issue in this trial.

3. Following Sam's arrest, all members of Sigma Zeta Zeta Pi were either suspended from school for violation of the school policy or had other disciplinary action taken against them, depending on the degree of their involvement in the hazing activities.

4. Cory and René are themselves under investigation for various criminal charges, including Education Code, Section 32051: Prohibition of Hazing (as defined in Section 32050). If the allegations are found true, both could be prosecuted criminally and/or administratively expelled from school. There were no discussions with the Prosecutor's Office about immunity.

5. All standard forensic procedures were followed in this investigation, and there are no objections as to the chain of evidence.

6. No identifiable fingerprints were lifted from Cory or René's beer steins, the Roses' keyboard or the plastic bag found in the defendant's home.

7. The form and service of the search warrant is proper and valid for the apartment entry and seizure of any illegal substances.

8. The steins and drugs are admitted as evidence; there is no need to physically introduce them in court.

9. There is no legal or factual issue regarding dates; the case does not correlate to any specific calendar year.

## PRETRIAL MOTION AND CONSTITUTIONAL ISSUE

This section of the mock trial contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. The **judge's ruling** on the pretrial motion will have a **direct bearing** on the admissibility of certain pieces of evidence and the possible outcome of the trial. The pretrial motion is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of factual situations, and analyze and debate constitutional issues. These materials can be used as a classroom activity or incorporated into a local mock trial competition.

The pretrial motion challenges the constitutionality of the seizure of the printout of Sam Rose's computer document. The outcome of the pretrial motion will have a direct bearing on admissibility of that piece of evidence. If the seizure is found to be unconstitutional and the evidence is found inadmissible, no questions can be asked about that document during the trial.

Legal and constitutional issues are matters exclusive to the pretrial hearing. For trials in which there is no pretrial hearing, the evidence seized from the defendant's apartment is admissible. This pretrial motion is the only allowable motion for the purposes of the competition.

### ARGUMENTS

The defense will argue that the screen saver and computer document were illegally and unconstitutionally seized and are inadmissible. The defense will argue that Thi had no authority to consent to the search of the apartment and that Thi's consent was not voluntary. Additionally, the defense will argue that Thi's scope of consent to look at the computer did not extend to search of files inside the computer. Finally, the defense will argue that the screen saver was not immediately incriminating, and the computer document underneath the screen saver was not in plain view.

The prosecution will argue that the screen saver and computer document were constitutionally and legally seized and are admissible. The prosecution will argue that Thi had the authority to consent to the officer's entry and search of the computer. The prosecution will also argue that the police were lawfully on the premises due to the search warrant. Further, because the computer screen saver was in plain view and incriminating enough to allow the officer to view the document below it, both documents are admissible.

### SOURCES

The sources for the pretrial motion arguments consist of excerpts from the U.S. Constitution, the California Penal Code, the California Health and Safety Code, and court opinions. Only the factual situation on pages 10-11, the witness statements on pages 22-32, the official diagram on page 35,, and the legal sources on pages 14-20 may be used for the purposes of the pretrial motion.

The U.S. Constitution is the ultimate source of protection from unreasonable searches and seizures, but its language is subject to interpretation. Both federal and state courts have the power to interpret the Constitution. The U.S. Supreme Court's holdings are binding and must be followed by California courts. However, in general, the Supreme Court makes very narrow decisions based on the specific facts of the case before it. In developing arguments, either side can make arguments distinguishing the factual patterns of cited cases from one another and from pretrial motion facts.

California Appellate and Supreme Court cases possess the same binding effects on lower courts and must be followed as well. Cases from states outside of California, however, as well as legal commentary and dissenting opinions in cited cases, can be used for persuasive purposes only and are not binding on a California judge.

## LEGAL AUTHORITIES

**U.S. Constitution:**

**U.S. Constitution, Amendment IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**U.S. Constitution, Amendment XIV**

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Statutes:**

**California Penal Code, Section 347**
**Poisoning food, drink, medicine, pharmaceutical product, or water**

(a) Every person who willfully mingles any poison or harmful substance with any food, drink, medicine, or pharmaceutical product or who willfully places any poison or harmful substance in any spring, well, reservoir, or public water supply, where the person knows or should have known that the same would be taken by any human being to his or her injury, is guilty of a felony punishable by imprisonment in the state prison for two, four, or five years.
Any violation of this subdivision involving the use of a poison or harmful substance which may cause death if ingested or which causes the infliction of great bodily injury on any person shall be punished by an additional term of three years.

(b) Any person who maliciously informs any other person that a poison or other harmful substance has been or will be placed in any food, drink, medicine, pharmaceutical product, or public water supply, knowing that such report is false, is guilty of a crime punishable by imprisonment in the state prison, or by imprisonment in the county jail not to exceed one year.

(c) The court may impose the maximum fine for each item tampered with in violation of subdivision (a).

**California Penal Code, Section 245**
**Assault with deadly weapon or by force likely to produce great bodily injury**

(a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.
(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars ($10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) (1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Any person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Section 12028.

(f) As used in this section, "peace officer" refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

**California Health & Safety Code, Section 11377**
**Drug Possession**

(a) Except as otherwise provided in subdivision (b) or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (4) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison.

(b) (1) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not previously been

convicted of such a violation involving a controlled substance specified in subdivision (f) of Section 11056, is guilty of a misdemeanor.

(2) Any person who violates subdivision (a) by unlawfully possessing a controlled substance specified in subdivision (g) of Section 11056 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

**California Health & Safety Code, Section 11057**
**Schedule IV Drugs defined.**

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section...

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

...(11) Flunitrazepam. [Rohypnol]...

**Education Code, Section 32050**
**Hazing.**

As used in this article, "hazing" includes any method of initiation or preinitiation into a student organization or any pastime or amusement engaged in with respect to such an organization which causes, or is likely to cause, bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm, to any student or other person attending any school, community college, college, university or other educational institution in this state; but the term "hazing" does not include customary athletic events or other similar contests or competitions.

**Education Code, Section 32051**
**Hazing; prohibition; violation; misdemeanor**

No student, or other person in attendance at any public, private, parochial, or military school, community college, college, or other educational institution, shall conspire to engage in hazing, or commit any act that causes or is likely to cause bodily danger, physical harm, or personal degradation or disgrace resulting in physical or mental harm t any fellow student or person attending the institution.

The violation of this section is a misdemeanor, punishable by a fine of not less than one hundred dollars ($100), nor more than five thousand dollars ($5000), or imprisonment in the county jail for not more than one year, or both.

**Federal Cases**

**1. *Mapp v. Ohio*, 367 U.S. 643 (1961)**

**Facts:** Police forced their way into defendant's home without a warrant and obtained incriminating evidence against her. The search violated the Fourth Amendment and was therefore illegal.

**Issue:** Should the evidence found in the illegal search be excluded from trial?

**Holding:** Yes, the evidence must be excluded. Evidence seized in violation of the Fourth Amendment is not admissible at trial in either state or federal courts. Courts must uphold and promote the constitutional rights of the people of the United States. "The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own law, or worse, its disregard of the character of its own existence."

This is the landmark case in search-and-seizure law. It established the following basic propositions:

(1) The Fourth Amendment's protections apply to actions by state authorities (because the 14th Amendment's due process clause incorporates such fundamental liberties).

(2) Evidence obtained by an illegal search or seizure must be excluded from trial. This is the so-called "exclusionary rule."

**2. *United States v. Murray*, 751 F.2nd 1528 (9th Circuit 1985)**

**Facts:** Suspects, Robert Murray and others, were accused of conspiracy to conceal assets in bankruptcy and other related charges. Police obtained a search warrant for business records in a suspect's home. During the search, officers inadvertently discovered in plain view stereo equipment that was an asset in the bankruptcy. Officers seized this item.

**Issue:** Was it legal for the police to seize this item?

**Holding:** Yes. During a legal search, officers may make a warrantless seizure of objects inadvertently found in plain view if it is immediately apparent to police that they have evidence before them. The seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, as long as there is probable cause to associate the property with criminal activity. The court merely requires that the facts available to the officer would warrant a man of reasonable caution to believe that certain items may be useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. It simply requires a practical, non-technical probability that incriminating evidence is involved.

**3. *Arizona v. Hicks*, 480 U.S. 321 (1987)**

**Facts:** Investigating a shooting, police legally enter an apartment looking for weapons and the shooter. While inside, an officer spots a high-priced stereo system that seems out of place in the rundown apartment. The officer picks it up, jots down the serial number, puts it down, calls headquarters, and finds out that the stereo is stolen.

**Issue:** Did the officer's actions violate the Fourth Amendment?

**Holding:** Yes. The officer's actions come within the purview of the Fourth Amendment. The mere recording of the serial numbers did not constitute a "seizure," as it did not meaningfully interfere with respondent's possessory interest in either the numbers or the

stereo equipment. But the moving of the equipment was a "search" separate and apart from the search that was the lawful objective of entering the apartment. The fact that the search uncovered nothing of great personal value to the respondent is irrelevant. The search was invalid because the policeman had only a "reasonable suspicion" — i.e., less than probable cause to believe — that the stereo equipment was stolen. Probable cause is required to invoke the "plain view" doctrine. The officers' action cannot be upheld on the ground that it was not a "full-blown search" but was only a "cursory inspection" that could be justified by reasonable suspicion instead of probable cause. A truly cursory inspection — one that involves merely looking at what is already exposed to view, without disturbing it — is not a "search" for Fourth Amendment purposes, and therefore does not even require reasonable suspicion. This court is unwilling to create a subcategory of "cursory" searches under the Fourth Amendment.

**4. *Illinois v. Rodriguez*, 497 U.S. 177 (1990)**

**Facts:** Police encountered a young woman who had been severely beaten. She informed them that the suspect was asleep in an apartment and offered to take them to the apartment and open the door with her key. On the way there, she spoke of "our" apartment and said she had clothes and furniture there. When they arrived, she unlocked the door and gave police permission to enter. They arrested the suspect and seized narcotics, which they found in plain view. The state courts held that the narcotics could not be used as evidence, because the woman did not in fact live in the apartment, but had moved out. The courts ruled that she therefore did not have authority to consent to the police entering.

**Issue:** Is a search legal if officers have a reasonable belief that a person has the authority to consent to the search?

**Holding:** Yes. A warrantless entry is valid when based upon the consent of a third party whom the police, at the time of the entry, reasonably believe to possess common authority over the premises, but who in fact does not. The Fourth Amendment does not protect people from government searches unless they consent. It only protects them from searches that are "unreasonable." As with other Fourth Amendment factual determinations, the "reasonableness" of a police determination of consent to enter must be judged not by whether the police were correct, but by the objective standard of whether the facts available at the moment would warrant a person of reasonable caution to believe that the consenting party had authority over the premises. If not, then warrantless entry without further inquiry is unlawful unless authority actually exists. But if so, the search is valid. The Supreme Court sent this case back to the lower courts to determine whether police had a reasonable belief that the young woman had authority to consent.

**5. *United States v. Hare*, 932 F.Supp. 843 (US District Court, Texas 1996)**

**Facts:** The defendant was arrested for possession of marijuana for sale. The police obtained a warrant to search for drugs at the defendant's home, and then conducted the search of the defendant's home under the warrant. When looking for contraband in the defendant's closet, the police found drug notes, among other things. The warrant did not specify drug notes.

**Issue:** Can the officers legally seize the drug notes even though they were not mentioned in the warrant?

**Holding:** Yes. An exception to the warrant requirement exists where contraband, evidence of a crime, or instrumentality is observed in plain view by an officer from a vantage point where he has a lawful right to be and where it is immediately apparent that the items are contraband or evidence of a crime. The seized items must have an incriminating character

immediately apparent to the searchers. The officer in this case was searching in a proper place and immediately recognized the drug notes as evidence of a crime.

**6. *United States v. Turner*, 169 F. 3rd 84 (1st Circuit 1999)**

**Facts:** A woman was awakened by a masked intruder with a knife. She was cut while trying to grab the knife. Her next-door neighbor, the defendant (Turner), called police and said he saw an intruder leaving her window. He police then spoke with the defendant. When the police continued their investigation the next day, they saw blood stains on Turner's window and assumed the intruder had tried to enter Turner's apartment as well. They police woke Turner up, told him about their concerns, and got his verbal permission to search his apartment for signs of the intruder. During the search, they found more bloodstains. They informed Turner that he was a suspect in the assault and got his written permission to search "the premises" and "personal property." Officers told him that they would search for "any signs a suspect had left behind" and "evidence of the assault itself." During the search, an officer found pornographic videotapes in a closet. While stacking these tapes on the computer table, the computer screen suddenly came on and a picture of a nude woman appeared. The officer looked at recently accessed files and eventually found some child pornography. Turner was charged with one count of possessing child pornography.

**Issue:** Was the search of the computer files legal?

**Holding:** No. A consensual search is an established exception to the Fourth Amendment warrant requirement. A consensual search may not exceed the scope of the consent given. The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness — what would the typical reasonable person have understood by the exchange between the officer and the person giving consent? Government agents may not obtain consent to search only for certain specified items and subsequently use that consent as a license to conduct a general exploratory search. An objectively reasonable person assessing the exchange between Turner and these detectives would have understood that the police intended to search only in places where an intruder hastily might have disposed of any physical evidence of the assault immediately after it occurred. It obviously would have been impossible to abandon physical evidence of this sort in a personal computer hard drive. Similarly, we cannot accept the government's contention that the sexually suggestive image that suddenly came into "plain view" on the computer screen rendered Turner's computer files "fair game."

**State Cases:**

**7. *People v. Welch*, 20 Cal. 4th 701 (1999)**

**Facts:** A murder suspect sought refuge in his second cousin's home. The cousin consented to a police search of her home where police found the murder weapon.

**Issue:** Is the search legal given that the police did not have a warrant or probable cause?

**Holding:** Yes. A valid consent to a search eliminates the need for either a valid warrant or probable cause. The person in control of the premises may consent to a search.

**8. *State of Oklahoma v. Pioneer CD-ROM Changer & Davis* 891 P.2nd 600 (1994)**

**Facts:** Police obtained a search warrant based on evidence that a suspect possessed CD-ROMs with obscene materials. During their search, police also seized files not specified in the search warrant, because a monitor displayed phrases indicating that people were accessing obscene materials online from the computer.

**Issue:** Was it legal for the officers to seize the files?

**Holding:** Yes. The equipment and its possible criminal use, here a monitor displaying incriminating words, were in plain view at the time the officers executed the warrant. Under the plain-view exception to the Fourth Amendment, the initial intrusion that afforded the plain view must have been lawful and the incriminating object must be immediately apparent.

**9. *Scott v. State*, 672 A. 2nd 550 (Delaware 1996)**

**Facts:** Police were dispatched to an apartment house because a man was reported with a gun. On arriving, the suspect, defendant Ryan Scott, answered the door and was taken into custody. In Scott's presence, police informed his girlfriend that he had a gun and asked permission to search her apartment for it. She gave verbal and written permission. Police searched the apartment, failed to find the gun, but discovered illegal narcotics in a duffel bag in the girlfriend's bedroom. Scott later admitted to ownership of the bag.

**Issue:** Did the girlfriend have authority to consent to the search?

**Holding:** Yes. An exception to the warrant requirement for searches and seizures exists for those conducted with valid consent. To be valid, consent must be voluntary and be given by a person who has authority to do so. In this case, the tenant girlfriend had authority to consent to the search. The suspect, as an overnight guest, had a reasonable expectation of privacy in the apartment, but he should have objected when his girlfriend gave her consent. In searching the bag, the police had no way of knowing from its outside appearance that the bag belonged to the suspect and not to the girlfriend.

**10. *People v. Pickens*, 655 N.E.2d 1206 (Illinois 1995)**

**Facts:** Responding to an anonymous tip about drug activity, police officers approached a house to search for drugs. The officers knew that Defendant Flagan Pickens lived there with Jason Cole, but they had no information that anyone else lived at that address. A third person, named Rodney Burris, answered the door and told them that Pickens and Cole were not home. Police saw another person, identified as Curt Allen, sleeping on the couch. When asked if he was staying there, Allen answered "yes." Police then asked him if they could search the premises for drugs, and Allen gave his consent. The officers asked no other questions about Allen's status or his authority over the home, but merely asked for permission to search. In fact, Allen contributed nothing toward rent or other expenses and lived elsewhere.

**Issue:** Did police have a reasonable belief that the person had authority to consent?

**Holding:** No. To have authority to consent to a search, a third party must have equal or greater right to occupation than the actual owner of the property. In this case, the person did not have authority to consent. For apparent authority consent searches, the police must act reasonably. The apparent authority rule does not allow police to proceed without inquiry in ambiguous circumstances or always accept at face value the consenting party's apparent assumption that he has authority to allow the search. The police must make reasonable inquiries when they find themselves in ambiguous circumstances that cry out for further inquiry. When this is the case, it is not reasonable for police to proceed on the theory that ignorance is bliss. Here, the person's statement that he was staying there called for further inquiry. Accepting it at face value was not reasonable.

## PROCEDURES FOR THE MOCK PRETRIAL MOTION HEARING

The following procedures and recommendations provide a format for the presentation of a mock pretrial motion in the local and state competitions, as well as for a classroom setting.

1. Ask your coordinator if your county will present pretrial arguments before every trial of each round. We urge coordinators to require a pretrial motion hearing in as many rounds as possible, both for its academic benefits and to prepare the winning team for state finals, where it will be a required part of the competition. Performances will be scored according to the criteria included in this packet.

2. Prior to the opening of the pretrial motion arguments, the judge will have read the pretrial materials provided in the case packet.

3. Be as organized as possible in your presentation. Provide clear arguments so the judge can follow and understand your line of reasoning.

4. Arguments should be well substantiated with references to any of the pretrial sources provided with the case materials and/or any common sense or social-interest judgments. Do not be afraid to use strong and persuasive language.

5. Use the facts of *People v. Rose* in your argument. Compare them to facts of cases in the pretrial materials that support your position, or distinguish the facts from a case that disagrees with the conclusion you desire.

6. Review the constitutional arguments to assist you in formulating your own arguments.

7. Your conclusion should be a very short restatement of your strongest arguments.

8. NOTE: The only motion allowed for the purposes of the competition is the pretrial motion outlined in this case packet, pages 13-21.

**WITNESS STATEMENT – Prosecution witness: Officer Chris Matsumoto**

My name is Chris Matsumoto, and I am a police officer with the San Domino Police Department. I am 37 years old and have worked on the force for 15 years, since receiving my Bachelor's Degree in Criminology from the University of San Domino. Currently, I am in the Drug Crimes Unit where I have been for the past three years. To remain a part of this unit, the San Domino Police Department requires that each officer take five work-related continuing education courses per year. This past year, I have taken "Identifying Street Drugs" and "Signs and Symptoms of Drug Overdoses," among others. These courses are given as part of the Criminal Justice Program at San Domino Community College. In both of these courses, Rohypnol was extensively covered. I have also arrested several individuals who have been under the influence of a mix of alcohol and Rohypnol. Based on my training and experience, I can easily recognize the symptoms of specific drug intoxication.

Every September for the past three years I have led a one day class at each of the local area high schools and junior high schools, educating the students about these life-endangering drugs, including a full description of the potential side effects and other dangers of Rohypnol. Every student is required to participate in this one-day workshop in order to qualify for advancement to the next grade.

On the night of December 7th I responded to an emergency call from Sunset Park. I arrived at the scene of the crime and found the two victims, later identified as Cory Jones and René Guerrero, unconscious on the ground. I immediately called a backup unit and remained with the victims until the ambulance arrived. Upon arrival of the backup team, I instructed the officers to process the remaining young people for underage drinking and possible drug consumption, and arrange for their parents to pick them up, as no one would be allowed to drive after drinking.

Being the senior officer, I then began my investigation of the crime scene. I collected and properly stored the beer steins for testing by the Department's toxicologist, Jaime Colannino, for any residue. Each stein had a different name on it. I also spoke to several witnesses who told me that the victims had been nauseous and dizzy prior to blacking out. Devon Taylor, the group's chaplain, stated that two of the pledges named Sam Rose and Cameron Bird were among the people who filled the steins. I was told that each member, including Cory and René, had been drinking from his or her own personal stein that evening. After interviewing Devon and Cameron, I proceeded to the San Domino Memorial Hospital.

Upon arriving at the hospital, I waited in Cory's room until Cory awoke early in the morning on December 8th. Cory immediately named Sam as a potential suspect. When I interviewed René shortly thereafter, René was quick to name Sam as the perpetrator as well. Cory and René both described their physical symptoms, and I was certain that Rohypnol was the culprit.

The next day, I received the report from the toxicologist confirming the existence of Rohypnol in both Cory and René's blood systems and in their steins, as well as their high blood alcohol levels. Based on witness and victim statements and evidence seized, I immediately requested a warrant to search Sam Rose's apartment for controlled substances. The warrant was issued on December 10th, and I proceeded directly to the Rose apartment. A young person answered the door and consented to my entry. As I entered the apartment, the screen of a computer on a living room desk caught my attention. It was covered with what appeared to be credit card numbers, complete with corresponding

names and expiration dates. I immediately suspected credit card fraud. The only person home was the one who opened the front door, later identified as Thi Nguyen. I asked, "Do you mind if I look at the computer?" and Thi responded, "Sure, go ahead." I walked over to get a closer look and saw the phrase, "I've got your number," right in the middle of the screen. It wasn't until I accidentally bumped the mouse that I realized the numbers were actually on a screen saver and not a document. The document that was revealed looked like some kind of poem or journal entry that said, "It's such sweet irony when the victim becomes the victor. It's such sweet revenge when those who victimize become the victims themselves." I suspected that the document was linked to the poisoning incident, so I printed it and took it with me as evidence.

Next, I looked under the two beds in the nearby room and found a plastic bag of what appeared to be three doses of Rohypnol under the bed closest to the door. The bag was resting on the floor next to a closed suitcase. I completed the search of the apartment and found no other illicit drugs. Based on all of the evidence collected, I Mirandized and arrested Sam Rose. I could not legally seize the computer with the search warrant I had, but I knew I had probable cause to obtain a second warrant to seize the computer for further analysis.

When I returned to the station, I asked Colannino to test the drugs from under the bed. The test positively identified them as Rohypnol. Next, I obtained the second search warrant, returned to the Rose apartment and seized the computer. Detectives at the department confirmed that the credit card numbers were false, and as it turns out, the screen saver was identified as a poster for a local band called "I've got your number." No other evidence of any crime was found in the computer files.

**WITNESS STATEMENT – Prosecution witness: Jaime Colannino**

My name is Jaime Colannino, and I am a toxicologist for the San Domino Memorial Hospital. I am also on contract with the San Domino Police Department where I work in toxicology. I have had a lot of experience with new street drugs such as Rohypnol, more commonly known as "roofies." Rohypnol usually comes in the form of small, white pills and looks similar to aspirin or other over-the-counter drugs. It dissolves in liquid and is odorless, thus becoming unrecognizable to the unsuspecting victim. When taken with alcohol, Rohypnol can become life threatening. It does not take long for a dose of Rohypnol to take effect, about 30 minutes. This drug is most commonly associated with the crime of date rape, but lately I have seen it used with an increasing variety of crimes as well as recreationally. As a result of this increased use of Rohypnol by young people, I have taken several classes on it specifically. Additionally, I have been qualified in court as an expert toxicologist and chemist over 20 times in the past year, alone.

I was working at the hospital the night of December 7th, when Cory and René were brought in. Both Cory and René were unconscious initially. After speaking with Officer Matsumoto, I suspected that the victims had ingested Rohypnol and requested blood tests for both of them. When they awoke, they complained of nausea, extreme body temperatures, headaches, anxiety, and muscle pain, among other symptoms. These were all typical symptoms of Rohypnol use, though it should be noted that not every victim experiences all or any of these different symptoms. When the results of Cory and René's blood tests returned, my suspicions proved correct. Both Cory and René tested positive for Rohypnol and had high blood alcohol levels. Cory had a blood alcohol level of .12, while René's was slightly higher, at .14. At the request of Officer Matsumoto, I tested the steins found at the crime scene. I began the tests on December 8th and submitted my report on December 9th. The report stated that I found traces of Rohypnol residue in Cory and René's steins, but not in the others.

I also conducted tests on the substance seized from Sam's apartment. These drugs were in small, white pill form and tested positive as Rohypnol. There were three two-milligram doses, which is more than enough to qualify as a usable quantity. "Usable quantity" means the amount is sufficient for the purpose of inducing the effect of the drug.

**WITNESS STATEMENT – Prosecution witness: Cory Jones**

My name is Cory Jones, and I live at 1234 Executive Lane in San Domino. I'm a senior at San Domino High School. I've lived here my whole life and always considered myself a leader among my peers. I am the top singles player on San Domino High School's tennis team, President of the Associated Student Body, and, most importantly, President of Sigma Zeta Zeta Pi.

Sigma Zeta Zeta Pi is a co-ed social club made up of a very elite group of teenagers in the community. It has been around for generations, since 1915 to be exact, and is very similar to a college co-ed fraternity. We are well known for throwing the wildest parties around, and sometimes drugs and alcohol can be found there, although our official club policy prohibits both. Everyone knows alcohol loosens things up.

Right now, everyone's suspended, but we would have had 42 members, eight of whom were only recently initiated. We are very picky about who we allow to be a part of Sigma Zeta Zeta Pi. When school starts each year, we choose our favorite 10th graders to rush. We then narrow that group down to those we allow to pledge. Those who make it through the pledge season and Hell Night, the last night of pledge season, are then initiated. This year we started out with 20 pledges, half of whom wimped out for some reason or another during the season.

This one pledge named Sam always had an attitude. Sam never showed up at the local hangouts and always stood in the corner at dances. Sam even got a job at school, working in the Registrar's Office, probably to pass time and compensate for a completely non-existent social life. Sam was just an outcast, so I definitely felt we were doing Sam a favor by allowing Sam to pledge. We only picked Sam as a favor to Cameron Bird, one of the most popular 10th graders at San Domino. Since Sam was a good friend of Cameron's, we figured Sam must be pretty cool, too. Boy, were we wrong! Recruiting Sam turned out to be a really bad decision. We found out that Sam wasn't just shy, but a bad sport – Sam could not take a joke at all. I've heard that Sam accused me of trying to get Sam to change a grade of mine. I did say that Sam could make some easy money changing grades, but I was just joking around and hassling Sam about having such a lame job.

Some time near the end of pledge season, Sam even started to make threats, saying to René and me, "What goes around, comes around!" What nerve! On December 3rd, a few days before Hell Night, Sam found me alone in the hall at school and confronted me about blackballing. Apparently, Sam heard something from Devon, but I don't know where Devon got the idea that we were planning to blackball Sam. Anyway, Sam said, "I've heard that you're thinking about blackballing some pledges. You'd better watch out because that could put you out of commission for a long time." This made me very angry. Sure, the threat was bad, but more importantly, Sam thought it was okay to confront me, the president of Sigma Zeta Zeta Pi, to tell me how I should be running the pledge process! That was just too much! That's when I knew who would get this year's "Least Likely to Succeed" award at Hell Night. Later that day I found René to talk about it. We don't even make those kinds of decisions until after Hell Night. As to that stupid "Least Likely to Succeed" award, that doesn't imply anything. In fact, I got that award as a pledge, and look at me.

Hell Night this year was definitely one to remember. Halfway through it, I asked Sam and Cameron to collect and fill our officer steins with beer for the Officers' Toast. Sam did what was asked for once and brought them back right away. Cameron helped, too, as Cameron always does, but I am pretty sure Sam gave René and me our steins. Soon after taking a few swigs from it, though, I started to feel very dazed and sick to my stomach. I was

freezing to death all of a sudden. Before I knew it, everything went dark and I don't remember what happened after that.

I woke up in the hospital with a police officer in my room. I think the police officer's name is Matsumoto. The officer asked if I had any inkling as to who could've done this to me, and I immediately knew it must have been Sam. Like I said, Sam always had an attitude. Anyway, ever since Hell Night I've been having occasional hallucinations, not to mention really bad muscle pain and headaches. I've gotten drunk and had major hangovers before, but never anything like this.

**WITNESS STATEMENT – Prosecution witness: René Guerrero**

My name is René Guerrero, and I live at 14225 Supreme Circle. I'm in my senior year at San Domino High School. I have lived in San Domino since elementary school, and Cory Jones is my best friend. I guess I have always sort of looked up to Cory, and we are always together. I am Rush Chair of Sigma Zeta Zeta Pi, so I am responsible for checking up on the pledges. One pledge named Sam regularly made trouble and talked back. The only reason Sam was asked to pledge in the first place was because of Sam's friendship with Cameron Bird, the younger sibling of Hunter Bird, one of last year's most popular graduates. One day, Sam even said to Cory and me, "What goes around comes around." I felt this was a threat.

Later during the pledging season, I think around the last weekend of November, I was on my way to check up on pledges and noticed Sam out in front of the apartment building with a suspicious looking character. They seemed to be making some kind of exchange, so I confronted Sam about it after the stranger left. Sam quickly stuck a small baggie in a coat pocket, and I asked what it was. Sam told me they were sleeping pills, that the stress from pledging was getting to be too much to handle. I thought this was odd, but I didn't bring it up again.

Then there was that final insult right before Hell Night, when Sam confronted Cory about the pledge process and blackballing. I wasn't there, but Cory told me about it later. Of course, we both agreed right away to give Sam the "Least Likely to Succeed" award for that comment. You can't just insult the president of Sigma Zeta Zeta Pi and get away with it! But that has nothing to do with blackballing anyone. Cory and I weren't going to think about that until the day after Hell Night. We don't have to think about it at all, now.

On Hell Night, I had been drinking quite a bit, as had everyone else. I probably had several beers before the toasting. I lost count as to how many Cory and I had, but I do remember seeing Sam by the bathrooms with some small pills. I heard Cory order Sam and Cameron to fill the steins, and I'm almost positive Sam filled ours.

A little while after drinking out of my stein, I start to feel queasy and very hot. At first, I thought it was just from the alcohol, but then I became dizzy and I guess I passed out because I don't remember anything else until I woke up in the hospital. An officer interviewed me and asked who might have had a motive to drug me. The first and only person I thought of was Sam.

Over the next several days, I felt very anxious and had a lot of really bad headaches.

**WITNESS STATEMENT – Defense witness: Sam Rose**

My name is Sam Rose, and I live at 2555 Western Boulevard, Apartment 3B, the white apartment building across the street from San Domino High where I attend school as a sophomore. This past June I moved here from Rhode Island with my parents. I just started at San Domino High School this September, and I have really had a tough time making new friends, with the exception of Cameron who I met at the mall during the summer. I took a job in the Registrar's Office starting the first day of school to earn some extra money and because I didn't feel comfortable at any of the local after-school hangouts.

I have to say I was surprised when I was asked to rush for Sigma Zeta Zeta Pi, being so new and shy. I missed my old close-knit group of friends back home and really wanted to find a new crowd, so I jumped on the opportunity to fit in. That's how I met Cory, this year's president of Sigma Zeta Zeta Pi. Unfortunately, a couple of weeks later Cory asked me to use my access to the Registrar's computer system to change one of Cory's grades, but I told Cory I couldn't do it. From that point on, I got some bad vibes from Cory. I was sure I wouldn't be picked as a pledge, refusing Cory's request like that. I was really blown away when they told me I had made it into the pledge class, and I'm sure it had something to do with my friendship with Cameron. Still, I was honored to have been chosen.

Pledging was difficult, to say the least, and much more arduous than I expected. Perhaps it was my imagination, but I could have sworn I was treated much worse than the other pledges. Then again, I'm sure all the pledges felt they were treated the worst. Cory and René, the Rush Chair, really worked me to the core. I think this probably made me a stronger person, though; it was almost good for me in the long run. I certainly didn't take it personally and I never threatened anyone.

Some people have been making a big deal about my telling Cory and René "what goes around, comes around," but I say that all the time. I believe in Karma, not revenge. Anyway, I was really determined to become a member of Sigma Zeta Zeta Pi and wouldn't have wanted to mess it all up by offending the top two members. I was willing to do whatever it took to make it in. I even began taking over-the-counter sleeping pills to help me sleep. I know it was a stupid thing to do, but I had to keep up with Rush and my classes. If my grades went down, my parents wouldn't let me stick with Sigma Zeta Zeta Pi. I don't know why René thought I was buying pills on the street. When René saw me on the street near my house, I was just getting the extra apartment key back from Thi, a family friend. I have an extra bed in my room that Thi uses sometimes. Thi had been staying at our place that weekend in November and was headed back up north to school. The key was in a little plastic bag so I wouldn't lose it. I'm always losing things.

The week before Hell Night, Cameron and I were getting more and more anxious, not knowing what to expect. Around that same time, a strange thing happened. The chaplain, Devon, one of the more lenient members, approached me and whispered, "Sam, you'd better drop out now because they are going to blackball you and embarrass you in front of everyone. Don't tell anyone I told you." Devon then took off without another word. I know what blackballing means, kicking a pledge out of the group, for no apparent reason, at the very tail end of the pledging process. While I couldn't say for sure whether or not Devon was telling the truth, my first inclination was that blackballing was an ancient tradition that never happened anymore, and this was just another tactic to get me to drop out. I thought maybe if I did a really good job, I would still make it in. But the more I thought about it, the more upset I got. It just isn't fair to make people do crazy, embarrassing stuff, just to prove how much they want to be part of a group, and then refuse to let them join. No matter whom they were going to blackball, it would be wrong. I would not want to be part of a

group that hurts people like that, and I don't think a group like that should be allowed to exist. So I decided to confront Cory about it. That was on the Friday before Hell Night, December 3rd, I think. I told Cory what I thought about blackballing, that Cory had better watch out because Sigma Zeta Zeta Pi could get in a lot of trouble for it.

Hell Night was just as bad, if not worse, than I thought it would be, especially when they embarrassed me with the "Least Likely to Succeed" award. I wasn't surprised to get that bowling ball after what I said to Cory earlier, and I almost left right then, but I decided to stick it out, to show everyone that I could take a joke and be a committed member of Sigma Zeta Zeta Pi. I started to get a bit of a headache after the award ceremony, but luckily I had brought some aspirin with me. When it came time for the toasting, Cameron and I filled the beer steins. I don't know whose steins I filled. We each randomly grabbed steins from the officers closest to us and filled and returned them to the officers as fast as we could. I was just as surprised as everyone else was when Cory and René became ill. I felt just horrible for them. I did not poison them; I never would do that to anyone.

On December 10th, the Friday after Hell Night, I was working at the computer, drafting a poem about the tragedy in the Balkans. It read, "It's such sweet irony when the victim becomes the victor. It's such sweet revenge when those who victimize become the victims themselves." I left to grab a snack at the market, and when I returned, the police were searching my family's apartment. I couldn't believe that they found those Roofies in my room. I did not put them under the guest bed by the door, they are not mine, and I don't know where they came from. As for the screen saver, I thought everyone in San Domino knew about that "I Got Your Number" flyer. They are all over town. Regardless, as soon as the police found the drugs, I was arrested.

I have since been told that I will not be welcomed as a member of Sigma Zeta Zeta Pi, but I guess it's for the best after this mess.

**WITNESS STATEMENT – Defense witness: Devon Taylor**

My name is Devon Taylor, and I live at 5678 Divinity Place in San Domino. I have lived here most of my life, and I consider myself a very accepting person with friends in many social groups at school. I am a senior at San Domino High School and chaplain of Sigma Zeta Zeta Pi. Although I was hesitant to join Sigma Zeta Zeta Pi when they first asked me to rush, I got to know the members better, and I decided to take a chance. After a while, though, I became disenchanted. I didn't like the hazing or the way they treated people.

There was this one entering student named Sam who I really liked. I was so glad when the officers allowed Sam to pledge because it meant so much to Sam. Sam was the new kid in town and a bit of a wallflower, so to speak, but still very nice. However, I really became upset shortly into the pledge season when the president, Cory, and the rush chair, René, blatantly started to treat Sam much worse than they treated the other pledges. They were always yelling at Sam and ordering Sam around. When they started to paddle Sam several more times than the other pledges, right in front of everyone, I really thought they took this way too far, and I was ashamed to be a part of this organization.

One day toward the end of pledge season, I overheard Cory and René laughing and talking about how they were planning to "blackball" Sam on Hell Night. This meant that they were going to kick Sam out after all that Sam had been through and embarrass Sam in front of everyone. I also overheard Cory mention something about Sam refusing to help Cory with a grade. I'm not sure what that was all about. The next day, I found Sam and Cameron together, and I told Sam to drop out now or be blackballed on Hell Night. I wanted to save Sam as much embarrassment as possible.

I was surprised to see Sam show up on Hell Night, but I guess that just goes to show you what a real trooper Sam is. Hell Night was horrific. Cory and René forced the poor pledges to swig mass quantities of alcohol, doused them with ketchup and mustard, and made them swallow live goldfish. Then they gave out those stupid awards. When it came time for the toasting, a special tradition, all of the members drank from their personalized beer steins. I drank the same beer that Cory and René drank, in my own stein, but I never got sick at all.

During the investigation that night, the police officer asked me if I knew who filled the steins for the toasting. I told the officer that Sam and some other pledges filled them, but I did not know who filled which steins in particular. I have since deactivated from Sigma Zeta Zeta Pi.

**WITNESS STATEMENT – Defense witness: Cameron Bird**

My name is Cameron Bird, and I live at 153 Companion Street. I just started at San Domino High School this fall, but I guess I'd already had the road paved for me, as my older brother, Hunter, was a pretty popular guy there and a favored member of Sigma Zeta Zeta Pi. Hunter just graduated last year, so quite a few students still remember him. I had it easy by having my place in the so-called popular crowd pretty much reserved for me; I was what they call a legacy for Sigma Zeta Zeta Pi. This meant I had a lock on becoming a member myself.

My friend Sam was not as lucky. Sam had just moved here from Rhode Island in June and didn't know anyone. I met Sam during the summer at the local mall, and we hit it off from the start. Sam is a really great person and an even better friend, but kind of quiet and reserved. Sam told me that in Rhode Island, Sam had a tight group of friends to hang out with, but here, Sam spends most lunch hours in the library and avoids social situations like dances. Sam is a very good student who studies more than anyone I know, but I also know how important it is for Sam to be part of a group of friends again.

I had urged Sam to rush Sigma Zeta Zeta Pi with me, and I actually asked Cory to consider Sam as a favor to me. I was excited when they chose Sam to be a pledge, but Sam was even more excited than I was. It was always Sigma Zeta this or Sigma Zeta that.

Unfortunately, Sam seemed to get the brunt of the harshness from the officers during pledging. Sam got yelled at more and called more names than everyone else. Sam was treated much worse than the rest of us pledges. I think Sam may have been singled out because of a certain incident that Sam only told me about when I forced the issue. Apparently, Cory asked Sam, who works in the Registrar's office, to change a grade. Sam refused and I think treating Sam so badly during pledging may have been Cory's way of getting back at Sam.

Devon, the chaplain of Sigma Zeta Zeta Pi, was probably the most understanding member. That's why I knew Devon meant it when Devon approached Sam shortly before Hell Night to tell Sam about the club's plan to blackball Sam. I never mentioned my opinion to Sam because I just didn't know the right thing to say.

When Hell Night came around, all of us pledges were scared – we did not know what to expect. It was as horrible as we had imagined, and the officers kept teasing that it would only get worse as the night went on. I just tried to tune out most of it, but I do know that when it came time for the toasting, Sam and I were asked to fill the beer steins, so someone else must have put those drugs in the steins before we even got to them. Cory and René were the only two officers to get sick. When they passed out, I was the one who immediately found the pay phone and called an ambulance and the police, both of which arrived within minutes; I spoke with Officer Matsumoto briefly. We all went home with our parents after that, but the rumor on campus the next day was that Cory and René had been drugged. When I found out that they would not admit Sam into Sigma Zeta Zeta Pi, I deactivated, withdrawing my membership.

**WITNESS STATEMENT – Defense witness: Thi Nguyen**

My name is Thi Nguyen, and I live up north where I am a junior in college. My family lives in Rhode Island, which is how I know the Roses. They have been family friends for years. I spend a lot of time on the weekends at the Roses, doing research for school or just getting away from campus. I also store all of my off-season clothes in a suitcase under the spare bed in Sam's room, the bed closest to the door. When I spend the night, they give me the guest key to the house, allowing me to come and go without bothering anyone. I always return the key before I leave for school. The Roses also let me use their computer, so I can do my homework while I visit. I keep a personal journal on their computer, too. I even made the screen saver – it's a copy of a flyer for a local band that my friends and I like.

Really, I'm almost a member of the Rose family by now. I was so happy last year when I found out the Roses were moving close to my college, at least compared to Rhode Island. It gave me an excuse to visit more often and eat some home-cooked meals. When I found out Sam was asked to pledge Sigma Zeta Zeta Pi, I tried to discourage Sam from joining. On the one hand, I know how difficult it has always been for Sam to make friends, given how shy Sam is, so I was happy to see Sam making such an effort to find a new group. On the other hand, I have had bad experiences with the frat system in the past, and I thought that system would eat Sam alive. I guess I was right.

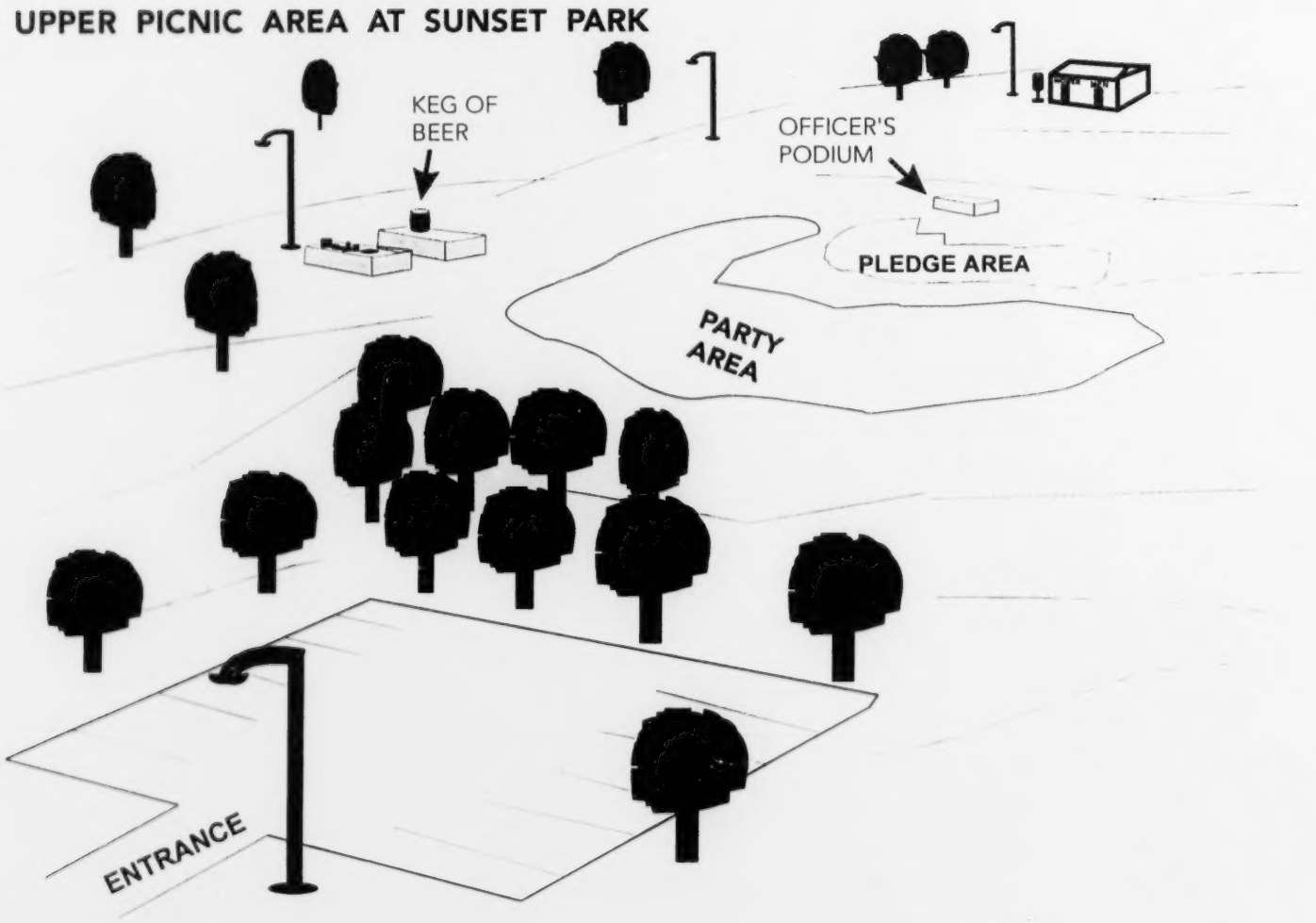
My most recent weekend visit to the Roses was at the end of November. Right before I left to go back to school, I met Sam on the front steps to return the extra apartment key, which I always keep in a plastic bag for safekeeping. This must be the supposed "exchange" that the kid at Sam's school mentioned.

On December 10th, I drove down to San Domino for the day to do some research for a term paper. Mr. & Mrs. Rose had left town the day before for a long weekend trip, and they asked me to check in with Sam. Sam's been pretty responsible in the past, so the Roses trusted Sam alone for the weekend. They just figured that it would be easy for me to do, since I was coming down there anyway.

That day, I picked up some books at the library. As I didn't have a key to get in the apartment, I waited until after school got out to see Sam. I figured I'd go to the apartment, hang out and do some reading, have dinner with Sam and then hit the road. I remember that Sam was working on the computer while I was reading. Just a few minutes after Sam left to run to the market, I was surprised by a knock at the Roses' door. I was not expecting anyone, and Sam had a key to the apartment and would not have knocked. When I answered the door, I saw a police officer. The officer asked to come in and I got out of the way. Then the officer asked to look at the computer. I said, "sure, go ahead." I wasn't about to say no to a cop, no matter what. I figured the officer was going to look around the outside of the computer, but I definitely didn't think that the police would search the computer files and print out Sam's document. I wouldn't have agreed to that.

I admit I experimented with drugs in the past, but never with Roofies. But that is way in the past. I have no idea where those pills in Sam's room came from.

# OFFICIAL DIAGRAM



# OFFICIAL DIAGRAM

## SUPERIOR COURT OF SAN DOMINO COUNTY

People

v.

Sam Rose

Docket No. A

Case No. 31299

**SEARCH WARRANT**

The people of the State of California to: any sheriff, marshal or police officer in the County of San Domino.

Proof, by affidavit, having been this day made before me by Officer Chris Matsumoto and Toxicologist Jaime Colannino, that there is probable cause for believing that Sam Rose may be in possession of illegal substances.

You are therefore commanded to search within a period of 10 days 2555 Western Boulevard, Apartment 3B, the residence of Sam Rose, and seize any illegal substances or drug paraphernalia, including Rohypnol.

You must leave a copy of this warrant and a receipt for the property taken and prepare a written inventory of the property seized and promptly return this warrant and bring the property before me as required by law.

Dated this 10th Day of December

Judge Magnan

Judge Magnan

# OFFICIAL DIAGRAM

# I've Got Your Number

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Andresantos | | | | | Ucmakli | | | | |
| 5678 | 3983 | 0945 | 2365 | 01/01 | 4658 | 9952 | 3521 | 5876 | 06/04 |
| Ulrich | | | | | Nathanson | | | | |
| 9045 | 0050 | 9378 | 9843 | 05/02 | 6582 | 3652 | 4542 | 9788 | 08/00 |
| Morales | | | | | Polanski | | | | |
| 2284 | 5 | | | | | | | 266 | 04/03 |
| Keipp | | | | | | | | | |
| 9564 | 7 | | | | | | | 245 | 08/01 |
| Schwich | | | | | Papadakis | | | | |
| 6549 | 8665 | 4968 | 7654 | 06/00 | 5584 | 6235 | 9874 | 1548 | 06/00 |
| Mardesich | | | | | Braffman | | | | |
| 5687 | 0001 | 6875 | 8988 | | 7643 | 0900 | 8986 | 3345 | 09/00 |
| Favazzo | | | | | Winckler | | | | |
| 7475 | 8834 | 9856 | 3524 | 03/02 | 3221 | 8765 | 7745 | 8003 | 09/01 |
| Mishell | | | | | Miller | | | | |
| 4588 | 3227 | 0978 | 6578 | 04/02 | 8574 | 3269 | 5218 | 1254 | 11/03 |
| Kusmiersky | | | | | Kilroy | | | | |
| 9929 | 7436 | 3289 | 2614 | 07/03 | 6543 | 3210 | 0008 | 6547 | 12/01 |

## THE FORM AND SUBSTANCE OF A TRIAL

### The Elements of a Criminal Offense

The penal (or criminal) code generally defines two aspects of every crime: the physical aspect and the mental aspect. Most crimes specify some physical act, such as firing a gun in a crowded room, and a guilty, or **culpable**, mental state. The intent to commit a crime and a reckless disregard for the consequences of one's actions are examples of a culpable mental state. Bad thoughts alone, though, are not enough. A crime requires the union of thought and action.

The mental state requirement prevents the conviction of an insane person. Such a person cannot form **criminal intent** and should receive psychological treatment rather than punishment. Also, a defendant may justify her/his actions by showing a lack of criminal intent. For instance, the crime of burglary has two elements: (1) breaking and entering (2) with the intent to steal. A person breaking into a burning house to rescue a baby has not committed a burglary.

### The Presumption of Innocence

Our criminal justice system is based on the premise that allowing a guilty person to go free is better than putting an innocent person behind bars. For this reason, defendants are presumed innocent. This means that the prosecution bears a heavy burden of proof; the prosecution must convince the judge or jury of guilt beyond a **reasonable doubt**.

### The Concept of Reasonable Doubt

Despite its use in every criminal trial, the term "reasonable doubt" is very hard to define. The concept of reasonable doubt lies somewhere between probability of guilt and a lingering possible doubt of guilt. A defendant may be found guilty "beyond a reasonable doubt" even though a possible doubt remains in the mind of the judge or juror. Conversely, triers of fact might return a verdict of not guilty while still believing that the defendant probably committed the crime. Reasonable doubt exists unless the trier of fact can say that she/he has an abiding conviction, to a moral certainty, of the truth of the charge.

Jurors must often reach verdicts despite contradictory evidence. Two witnesses might give different accounts of the same event. Sometimes a single witness will give a different account of the same event at different times. Such inconsistencies often result from human fallibility rather than intentional lying. The trier of fact (in the Mock Trial competition, the judge) applies her/his own best judgment to the evaluation of inconsistent testimony.

A guilty verdict may be based upon circumstantial (indirect) evidence. However, if there are two reasonable interpretations of a piece of circumstantial evidence, one pointing toward guilt of the defendant and another pointing toward innocence of the defendant, the trier of fact is required to accept the interpretation that points toward the defendant's innocence. On the other hand, if a piece of circumstantial evidence is subject to two interpretations, one reasonable and one unreasonable, the trier of fact must accept the reasonable interpretation even if it points toward the defendant's guilt. It is up to the trier of fact to decide whether an interpretation is reasonable or unreasonable.

## ROLE DESCRIPTIONS

### ATTORNEYS

The **pretrial motion attorney** presents the oral argument for (or against) the motion brought by the defense. You will present your position and answer questions by the judge, as well as try to refute the opposing attorney's arguments in your rebuttal.

**Trial attorneys** control the presentation of evidence at trial and argue the merits of their side of the case. They do not themselves supply information about the alleged criminal activity. Instead, they introduce evidence and question witnesses to bring out the full story.

The **prosecutor** presents the case for the state against the defendant(s). By questioning witnesses, you will try to convince the judge or jury (juries are **not** used at state finals) that the defendant(s) is guilty beyond a reasonable doubt. You will want to suggest a motive for the crime and will try to refute any defense alibis.

The **defense attorney** presents the case for the defendant(s). You will offer your own witnesses to present your client's version of the facts. You may undermine the prosecution's case by showing that the prosecution witnesses are not dependable or that their testimony makes no sense or is seriously inconsistent.

Trial attorneys will:

- Conduct direct examination.
- Conduct cross-examination.
- Conduct re-direct examination, if necessary.
- Make appropriate objections. Please note Rule Section III, #15, page 59:
  "Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."
- Conduct the necessary research and be prepared to act as a substitute for any other attorneys.
- Make opening statements and closing arguments.

**Each** student attorney should take an active role in some part of the trial.

### WITNESSES

You will supply the facts in the case. As a witness, the official source of your testimony, or Record, is comprised of your witness statement, all stipulations and exhibits, and any portion of the Fact Situation of which you reasonably would have knowledge. The Fact Situation is a set of indisputable facts that all witnesses and attorneys may refer to and draw reasonable inferences from. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses as identified.

You may testify to facts stated in or reasonably inferred from your Record. If an attorney asks you a question, and there is no answer to it in your official testimony, you can choose how to answer it. You can either reply, "I don't know" or "I can't remember," or you can infer an answer from the facts you do officially know. Inferences are only allowed if they are *reasonable* (see Rule Section IV, pages 60-61). Your inference cannot contradict your official testimony, or else **you can be impeached** using the procedures outlined in this packet. Practicing your testimony with your attorney coach and your team will help you to fill in any gaps in the official materials.

It is the responsibility of the attorneys to make the appropriate objections when witnesses are asked to testify about something that is not generally known or that cannot be reasonably inferred from the fact situation or a signed witness statement.

## COURT CLERK, COURT BAILIFF

We recommend that you provide two separate people for these roles, but if you assign only one, then that person **must** be prepared to perform as clerk or bailiff in any given trial. In addition to the individual clerk and bailiff duties outlined below, this person can act as your **team manager**. As a manager, she/he should be responsible for keeping a list of phone numbers of all team members and ensuring that everyone is informed of the schedule of meetings. In case of illness or absence, the manager should also keep a record of all witness testimony and a copy of all attorney notes so that another team member may fill in if necessary.

**The clerk and bailiff have individual scores to reflect their contributions to the trial proceedings.**

The court clerk and the bailiff aid the judge in conducting the trial. In an actual trial, the court clerk calls the court to order and swears in the witnesses to tell the truth. The bailiff watches over the defendant to protect the security of the courtroom. For the purpose of the competition, the duties described below are assigned to the roles of clerk and bailiff.

Before each round of competition, the court clerks, bailiffs, and unofficial timers must meet with a staff person at the courthouse about 15 minutes before the trial begins. At this time, their duties will be reviewed and their courtroom assignments will be confirmed. **Prosecution teams will be expected to provide the clerk for the trial; defense teams are to provide the bailiff.** The clerks and unofficial timers will be given the time sheets. After ensuring that all trials have a clerk and a bailiff, all will be dismissed to their respective school's trial.

### Duties of the Court Clerk

When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court clerk.

In the Mock Trial competition, the court clerk's major duty is to time the trial. **You are responsible for bringing a stopwatch to the trial. Please be sure to practice with it and know how to use it when you come to the trials.**

**An experienced timer (clerk) is critical to the success of a trial.**

*INTERRUPTIONS IN THE PRESENTATIONS DO NOT COUNT AS TIME.* For direct, cross and re-direct examination, record only time spent by attorneys asking questions and witnesses answering them. Do not include time when:

- witnesses are coming into the courtroom.
- attorneys are making objections.
- judges are questioning attorneys or witnesses or offering their observations.

When a team has two minutes remaining in a category, call out "Two"; when one minute remains, call out "One." Always speak loud enough for everyone to hear you. When time for a category has run out, announce "Time!" and **insist the students stop**. There is to be **no allowance for overtime under any circumstance**. This will be the procedure adhered to at the state finals. After each witness has completed her/his testimony, mark down the exact time on the time sheet. **Do not round off the time.**

**Duties of the Bailiff**
When the judge arrives in the courtroom, introduce yourself and explain that you will assist as the court bailiff.

In the Mock Trial Competition, the bailiff's major duties are to call the court to order and to swear in witnesses. Please use the language below. When the judge has announced that the trial shall begin, say:

"All rise. Superior Court of the State of California, County of_____, Department _____, the Honorable Judge _____ presiding, is now in session. Please be seated and come to order."

When you have brought a witness to testify, you must swear in the witness as follows:

"Do you solemnly affirm that the testimony you may give in the cause now pending before this court shall be the truth, the whole truth, and nothing but the truth?"

**In addition, the bailiff is responsible for bringing to trial a copy of the "Rules of Competition." In the event that a question arises and the judge needs further clarification, the bailiff is to provide this copy to the judge.**

## PROCEDURES FOR PRESENTING A MOCK TRIAL CASE

**Introduction of Physical Evidence**
Attorneys may introduce physical exhibits, if any are listed under the heading "Evidence," provided that the objects correspond to the description given in the case materials. Below are the steps to follow when introducing physical evidence (maps, diagrams, etc.). All items are presented prior to trial.

1. Present the item to an attorney for the opposing team prior to trial. If that attorney objects to use of the item, the judge will rule whether it fits the official description.

2. When you first wish to introduce the item during trial, request permission from the judge: "Your honor, I ask that this item be marked for identification as Exhibit # ___."

3. Show the item to the witness on the stand. Ask the witness if she/he recognizes the item. If the witness does, ask her/him to explain it or answer questions about it. (Make sure that you show the item to the witness; don't just point!)

4. When you finish using the item, give it to the judge to examine and hold until needed again by you or another attorney.

**Moving the Item !nto Evidence**
Exhibits must be introduced into evidence if attorneys wish the court to consider the items themselves as evidence, not just the testimony about the exhibits. Attorneys must ask to move the item into evidence at the end of the witness examination.

1. "Your honor, I ask that this item (describe) be moved into evidence as People's (or Defendant's) Exhibit #___, and request that the court so admit it."

2. At this point, opposing counsel may make any proper objections she/he may have.

3. The judge will then rule on whether the item may be admitted into evidence.

**The Opening Statement**
The opening statement outlines the case as you intend to present it. The prosecution delivers the first opening statement. A defense attorney may follow immediately or delay the opening statement until the prosecution has finished presenting its witnesses. A good opening statement should:

- Explain what you plan to prove and how you will prove it.
- Present the events of the case in an orderly sequence that is easy to understand.
- Suggest a motive or emphasize a lack of motive for the crime.

Begin your statement with a formal address to the judge:
"Your honor, my name is _____ (full name), the prosecutor representing the people of the state of California in this action;" or
"Your honor, my name is _____ (full name), counsel for _____ (defendant) in this action."

Proper phrasing includes:
"The evidence will indicate that..."
"The facts will show..."
"Witness _____ (full name) will be called to tell..."
"The defendant will testify that . . ."

**Direct Examination**
Attorneys conduct direct examination of their own witnesses to bring out the facts of the case. Direct examination should:

- Call for answers based on information provided in the case materials.
- Reveal all of the facts favorable to your position.
- Ask the witness to tell the story rather than using leading questions, which call for "yes" or "no" answers. (An opposing attorney may object to the use of leading questions on direct examination. See "Leading Questions," page 49.)
- Make the witness seem believable.
- Keep the witness from rambling about unimportant matters.

Call for the witness with a formal request:
"Your honor, I would like to call _____ (name of witness) to the stand."

The witness will then be sworn in before testifying.

After the witness swears to tell the truth, you may wish to ask some introductory questions to make the witness feel comfortable. Appropriate inquiries include:

- The witness's name.
- Length of residence or present employment, if this information helps to establish the witness's credibility.
- Further questions about professional qualifications, if you wish to qualify the witness as an expert.

Examples of proper questions on direct examination:
"Could you please tell the court what occurred on _____ (date)?"
"What happened after the defendant slapped you?"
"How long did you see...?"
"Did anyone do anything while you waited?"
"How long did you remain in that spot?"

Conclude your direct examination with:
"Thank you, Mr./Ms. _____ (name of witness). That will be all, your honor." (The witness remains on the stand for cross-examination.)

**Cross-Examination**
Cross-examination follows the opposing attorney's direct examination of her/his witness. Attorneys conduct cross-examination to explore weaknesses in the opponent's case, test the witness' credibility, and establish some of the facts of the cross-examiner's case whenever possible. Cross-examination should:

- Call for answers based on information given in Witness Statements or Fact Situation.
- Use leading questions which are designed to get "yes" and "no" answers.
- Never give the witness a chance to unpleasantly surprise the attorney.

In an actual trial, cross-examination is restricted to the scope of issues raised on direct examination. Because Mock Trial attorneys are not permitted to call opposing witnesses as their own, the scope of cross-examination in a Mock Trial is not limited in this way.

Examples of proper questions on cross-examinations:

"Isn't it a fact that...?"

"Wouldn't you agree that...?"

"Don't you think that...?"

"When you spoke with your neighbor on the night of the murder, weren't you wearing a red shirt?"

Cross-examination should conclude with:

"Thank you, Mr./Ms. _____ (name of witness). That will be all, your honor."

**Impeachment During Cross-Examination**

During cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness's credibility (truth-telling ability) doubtful. Other times, it may be done by asking about evidence of certain types of criminal convictions.

A witness also may be impeached by introducing the witness's statement and asking the witness whether she/he has contradicted something in the statement (i.e. identifying the specific contradiction between the witness's statement and oral testimony).

Example: (Prior conduct)

"Is it true that you beat your nephew when he was six years old and broke his arm?"

Example: (Past conviction)

"Is it true that you've been convicted of assault?"

(NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct **actually** happened.)

Examples: (Using signed witness statement to impeach)

"Mr. Jones, do you recognize the statement I have had the clerk mark Defense Exhibit A?"

"Would you read the third paragraph aloud to the court?"

"Does this not directly contradict what you said on direct examination?"

**Re-Direct Examination**

Following cross-examination, the counsel who called the witness may conduct re-direct examination. Attorneys conduct re-direct examination to clarify new (unexpected) issues or facts brought out in the immediately preceding cross-examination **only**. They may not bring up any issue brought out during direct examination. Attorneys may or may not want to conduct re-direct examination. If an attorney asks questions beyond the issues raised on cross, they may be objected to as "outside the scope of cross-examination." It is sometimes more beneficial not to conduct re-direct for a particular witness. To properly decide whether it is necessary to conduct re-direct examination, the attorneys must pay close attention to what is said during the cross-examination of their witnesses.

If the credibility or reputation for truthfulness of a witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to "save" the witness through re-direct. These questions should be limited to the damage the attorney thinks has been done and should enhance the witness's truth-telling image in the eyes of the court.

Work closely with your attorney coach on re-direct strategies.

**Closing Arguments**

A good closing argument summarizes the case in the light most favorable to your position. The prosecution delivers the first closing argument. The closing argument of the defense attorney concludes the presentations. A good closing argument should:

- Be **spontaneous**, synthesizing what **actually happened in court** rather than being "pre-packaged." **NOTE: Points will be deducted from the closing argument score if concluding remarks do not actually reflect statements and evidence presented during the trial.**
- Be emotionally charged and strongly appealing (unlike the calm opening statement).
- Emphasize the facts that support the claims of your side, but not raise any new facts.
- Summarize the favorable testimony.
- Attempt to reconcile inconsistencies that might hurt your side.
- Be well organized. (Starting and ending with your strongest point helps to structure the presentation and gives you a good introduction and conclusion.)
- **The prosecution** should emphasize that the state has proven guilt beyond a reasonable doubt.
- **The defense** should raise questions that suggest the continued existence of a reasonable doubt.

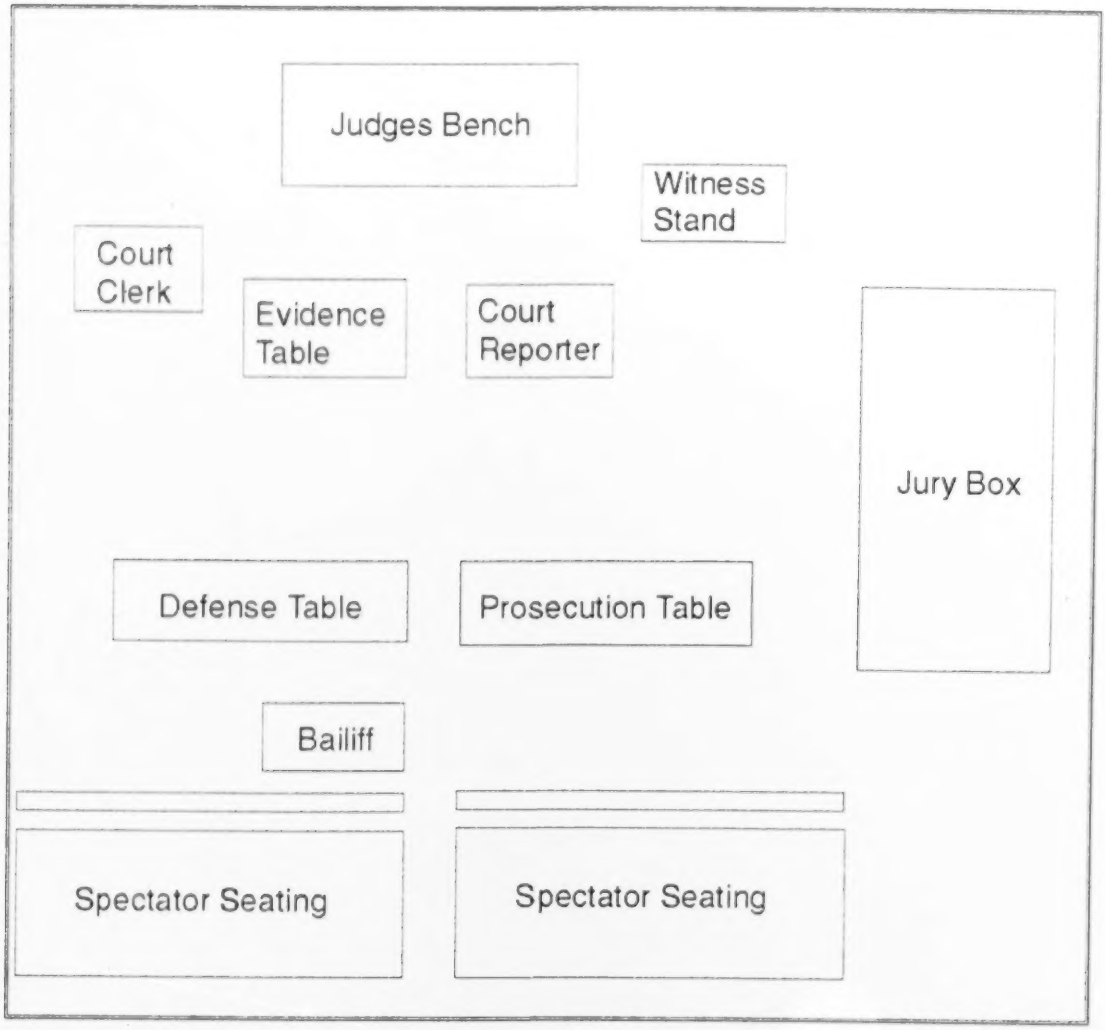
Proper phrasing includes:

"The evidence has clearly shown that . . . "
"Based on this testimony, there can be no doubt that . . . "
"The prosecution has failed to prove that . . . "
"The defense would have you believe that . . . "

Conclude the closing argument with an appeal to convict or acquit the defendant.

**An attorney may use up to one minute of closing argument time for rebuttal.** Only issues that were addressed in an opponent's closing argument may be raised during rebuttal.

## DIAGRAM OF A TYPICAL COURTROOM



## MOCK TRIAL SIMPLIFIED RULES OF EVIDENCE

Criminal trials are conducted using strict rules of evidence to promote fairness. To participate in a Mock Trial, you need to know about the role that evidence plays in trial procedure. Studying the rules will prepare you to make timely objections, avoid pitfalls in your own presentations, and understand some of the difficulties that arise in actual cases. The purpose of using rules of evidence in the competition is to structure the presentations to resemble an actual trial.

Almost every fact stated in the materials will be admissible under the rules of evidence. All evidence will be admitted unless an attorney objects. Because rules of evidence are so complex, you are not expected to know the fine points. To promote the educational objectives of this program, students are restricted to the use of a select number of evidentiary rules in conducting the trial.

### Objections

It is the responsibility of the party opposing the evidence to prevent its admission by a **timely and specific objection**. Objections not raised in a timely manner are waived. **An effective objection is designed to keep inadmissible testimony, or testimony harmful to your case, from being admitted. *A single objection* may be more effective than several objections.** Attorneys can and should object to questions that call for improper answers before the answer is given.

**For the purposes of this competition, teams will be permitted to use only certain types of objections.** The allowable objections are summarized on page 52. **Other objections may not be raised at trial.** As with all objections, the judge will decide whether to allow the testimony, strike it, or simply note the objection for later consideration. **Judges' rulings are final**. You must continue the presentation even if you disagree. A proper objection includes the following elements:

1) attorney addresses the judge,
2) attorney indicates that she/he is raising an objection,
3) attorney specifies what she/he is objecting to, e.g. the particular word, phrase or question, and
4) attorney specifies the legal grounds that the opposing side is violating.

Example: (1) "Your honor, (2) I object (3) to that question (4) on the ground that it is compound."

### Allowable Evidentiary Objections

**1. Facts Outside the Record (FOR)**

This objection is specific to the competition and is not an ordinary rule of evidence. The FOR objection applies if a witness creates new facts not included in and which cannot be reasonably inferred from her/his official Record. See Rule Section IV, pages 60-61 for a more detailed explanation.

Form of Objection: **"Objection, your honor. The answer is creating a material fact that is not in the record," or "Objection, your honor. The question seeks material testimony that goes beyond the scope of the record."**

**2. Relevance**

Relevant evidence makes a fact that is important to the case more or less probable than the fact would be without the evidence. To be admissible, any offer of evidence must be relevant to an issue in the trial. The court may exclude relevant evidence if it is unfairly prejudicial, confuses the issues, or is a waste of time.

Either **direct** or **circumstantial** evidence may be admitted in court. Direct evidence proves the fact asserted without requiring an inference. A piece of circumstantial (indirect) evidence is a fact (Fact I) that, if shown to exist, suggests (implies) the existence of an additional fact (Fact 2), (i.e. if Fact 1, then probably Fact 2). The same evidence may be both direct and circumstantial depending on its use.

Example: Eyewitness testimony that the defendant shot the victim is **direct** evidence of the defendant's assault. Testimony establishing that the defendant had a motive to shoot the victim, or that the defendant was seen leaving the victim's apartment with a smoking gun, is **circumstantial** evidence of the defendant's assault.

Form of Objection: **"Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record." or**

**"Objection, your honor. Counsel's question calls for irrelevant testimony."**

**3. Laying a Proper Foundation**

To establish the relevance of circumstantial evidence, you may need to **lay a foundation**. Laying a proper foundation means that, before a witness can testify to certain facts, it must be shown that the witness was in a position to know about those facts.

Sometimes when laying a foundation, the opposing attorney may object to your offer of proof on the ground of relevance, and the judge may ask you to explain how the offered proof relates to the case.

Example: If attorney asks a witness if he saw X leave the scene of a murder, opposing counsel may object for a lack of foundation. The questioning attorney should ask the witness first if he was at or near the scene at the approximate time the murder occurred. This lays the foundation that the witness is legally competent to testify to the underlying fact.

Form of Objection: **"Objection, your honor. There is a lack of foundation."**

**4. Personal Knowledge**

A witness may not testify about any matter of which the witness has no personal knowledge. Only if the witness has directly observed an event may the witness testify about it. Witnesses will sometimes make inferences from what they actually did observe. An attorney may properly object to this type of testimony because the witness has no personal knowledge of the inferred fact.

Example: From around a corner, the witness heard a commotion. Upon investigating, the witness found the victim at the foot of the stairs, and saw the defendant on the landing, smirking. The witness cannot testify over the defense attorney's objection that the defendant had pushed the victim down the stairs, even though this inference seems obvious.

Form of Objection: **"Objection, your honor. The witness has no personal knowledge to answer that question." or**

**"Your honor, I move that the witness's testimony about...be stricken from the case because the witness has been shown not to have personal knowledge of the matter." (This motion would follow cross-examination of the witness that revealed the lack of a basis for a previous statement.)**

**5. Character Evidence**

Witnesses generally cannot testify about a person's character unless character is an issue. Such evidence tends to add nothing to the crucial issues of the case. (The honesty of a witness, however, is one aspect of character always at issue.) In criminal trials, the defense may introduce evidence of the defendant's good character and, if relevant, show the bad character of a person important to the prosecution's case. Once the defense introduces evidence of character, the prosecution can try to prove the opposite. These exceptions are allowed in criminal trials as an extra protection against erroneous guilty verdicts.

Examples:

1. The defendant's minister testifies that the defendant attends church every week and has a reputation in the community as a law-abiding person. This would be admissible.

2. The prosecutor calls the owner of the defendant's apartment to testify. She testifies that the defendant often stumbled in drunk at all hours of the night and threw wild parties. This would probably not be admissible unless the defendant had already introduced evidence of good character. Even then, the evidence and the prejudicial nature of the testimony might outweigh its probative value making it inadmissible.

Form of Objection: **"Objection, your honor. Character is not an issue here," or**

**"Objection, your honor. The question calls for inadmissible character evidence."**

**6. Opinion of Lay Witness (non-expert)**

Opinion includes inferences and other subjective statements of a witness. In general, lay witness opinion testimony is inadmissible. It is admissible where it is (a) rationally based upon the perception of the witness AND (b) helpful to a clear understanding of the testimony. Opinions based on a common experience are admissible. Some common examples of admissible lay witness opinions are speed of a moving object, source of an odor, appearance of a person, state of emotion, or identity of a voice or handwriting.

Example: A witness could testify that, "I saw the defendant who was elderly, looked tired, and smelled of alcohol." All of this statement is proper lay witness opinion testimony as long as there is personal knowledge and a proper foundation.

Form of Objection: **"Objection, your honor. The question calls for inadmissible opinion testimony on the part of the witness. I move that the testimony be stricken from the record."**

**7. Expert Witness and Opinion Testimony**

An expert witness may give an opinion based on professional experience. A person may be qualified as an expert if she/he has special knowledge, skill, experience, training, or education. Experts must be qualified before testifying to a professional opinion. A qualified expert may give an opinion based upon personal observations as well as facts made known to her/him outside the courtroom. The facts need not be admissible evidence if it is the type reasonably relied upon by experts in the field. Experts may give opinions on ultimate issues in controversy at trial. In a criminal case, an expert may **not** state an opinion as to whether the defendant did or did not have the mental state in issue.

Example: A doctor bases her opinion upon (1) examination of the patient and (2) medically relevant statements of patient's relatives. Personal examination is admissible because it is relevant and based on personal knowledge. The statements of the relatives are inadmissible hearsay but are proper basis for opinion testimony because they are reasonably relevant to a doctor's diagnosis.

Form of Objection: **"Objection, your honor. There is a lack of foundation for opinion testimony," or**

**"Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."**

**8. Hearsay**

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Hearsay is considered untrustworthy because the speaker of the out-of-court statement is not present and under oath and therefore cannot be cross-examined. Because these statements are very unreliable, they ordinarily are not admissible.

Testimony not offered to prove the truth of the matter asserted is, by definition, *not* hearsay. For example, testimony to show that a statement was said and heard, to show that a declarant could speak in a certain language, or to show the statement's effect on a listener is admissible.

Examples:

1. Joe is being tried for murdering Henry. The witness testifies, "Ellen told me that Joe killed Henry." If offered to prove that Joe killed Henry, this statement is hearsay and probably would not be admitted over an objection.

2. However, if the witness testifies, "I heard Henry yell to Joe to get out of the way," this could be admissible. This is an out-of-court statement, but is not offered to prove the truth of its contents. Instead, it is being introduced to show that Henry had warned Joe by shouting. Hearsay is a very tricky subject.

Form of Objection: **"Objection, your honor. Counsel's question calls for hearsay." or**

**"Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."**

Out of practical necessity, courts have recognized certain general categories of hearsay that may be admissible. Exceptions have been made for certain types of out-of-court statements based on circumstances that promote greater reliability. **The exceptions listed below and any other proper responses to hearsay objections may be used in the Mock Trial. Work with your attorney coach on the exceptions that may arise in this case.**

a. **Admission by a party opponent**—a statement made by a party to the legal action (or someone identified with her/him in legal interest) of the existence of a fact relevant to the cause of her/his adversary. (An admission is not limited to words, but may also include the demeanor, conduct and acts of a person charged with a crime.)

b. **Excited utterance**—a statement made shortly after a startling event, while the declarant is still excited or under the stress of excitement.

c. **State of mind**—a statement that shows the declarant's mental, emotional, or physical condition.

d. **Declaration against interest**—a statement that puts declarant at risk of civil or criminal liability.

e. **Records made in the regular course of business**

f. **Official records and writings by public employees**

g. **Past recollection recorded**—something written by a witness when events were fresh in that witness's memory, used by the witness with insufficient recollection of the event and read to the trier of fact. (The written material is not admitted as evidence.)

h. **Statements for the purpose of medical diagnosis or treatment**

i. **Reputation of a person's character in the community**

j. **Dying declaration** - a statement made by a dying person respecting the cause and circumstances of her/his death, which was made upon that person's personal knowledge and under a sense of immediately impending death.

k. **Co-conspirator's statements** - (a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy; (b) The statement was made prior to or during the time that the party was participating in that conspiracy; and (c) The evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in subdivisions (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

## Allowable Objections for Inappropriately Phrased Questions

**9. Leading Questions**

Attorneys may not ask witnesses leading questions during direct examination. A leading question is one that suggests the answer desired. Leading questions are permitted on cross-examination.

Example:

Counsel for the prosecution asks the witness, "During the conversation, didn't the defendant declare that he would not deliver the merchandise?"

Counsel could rephrase the question, "Will you state what, if anything, the defendant said during this conversation, relating to the delivery of the merchandise?"

Form of Objection: **"Objection, your honor. Counsel is leading the witness."**

**10. Compound Question**

A compound question joins two alternatives with "and" or "or," preventing the interrogation of a witness from being as rapid, distinct, or effective for finding the truth as is reasonably possible.

Example: "Did you determine the point of impact from conversations with witnesses and from physical marks, such as debris in the road?"

Form of Objection: **"Objection, your honor, on the ground that this is a compound question."**

The best response if the objection is sustained on these grounds would be, "Your honor, I will rephrase the question," and then break down the question accordingly. Remember that there may be another way to make your point.

**11. Narrative**

A narrative question is one that is too general and calls for the witness in essence to "tell a story" or make a broad-based and unspecific response. The objection is based on the belief that the question seriously inhibits the successful operation of a trial and the ultimate search for the truth.

Example: The attorney asks A, "Please tell us all of the conversations you had with X before X started the job."

The question is objectionable, and the objections should be sustained.

Form of Objection: **"Objection, your honor. Counsel's question calls for a narrative."**

**Other Objections**

**12. Argumentative Question**
An argumentative question challenges the witness about an inference from the facts in the case. A cross-examiner may, however, legitimately attempt to force the witness to concede the historical fact of a prior inconsistent statement.

Questions such as "How can you expect the judge to believe that?" are argumentative and objectionable. The attorney may argue the inferences during summation or closing argument, but the attorney must ordinarily restrict her/his questions to those calculated to elicit facts.

Form of Objection: **"Objection, your honor. Counsel is being argumentative." or**

**"Objection, your honor. Counsel is badgering the witness."**

**13. Asked and Answered**
Witnesses should not be asked a question that has previously been asked and answered. This can seriously inhibit the effectiveness of a trial.

Examples: 1. **On Direct Examination**— Counsel A asks B, "Did X stop for the stop sign?" B answers, "No, he did not." A then asks, "Let me get your testimony straight. Did X stop for the stop sign?"

Counsel for X correctly objects and should be sustained.

BUT: 2. **On Cross-Examination**— Counsel for X asks B, "Didn't you tell a police officer after the accident that you weren't sure whether X failed to stop for the stop sign?" B answers, "I don't remember." Counsel for X then asks, "Do you deny telling him that?"

Counsel A makes an **asked and answered objection**. The objection should be **overruled**. **Why?** It is sound policy to permit cross-examining attorneys to ask the same question more than once in order to conduct a searching probe of the direct examination testimony.

Form of Objection: **"Objection, your honor. This question has been asked and answered."**

**14. Vague and Ambiguous Questions**
Questions should be clear, understandable, and as concise as possible. The objection is based on the notion that a witness cannot answer a question properly if she/he does not understand the meaning of that question.

Example: "Does it all happen at once?"

Form of Objection: **"Objection, your honor. This question is vague and ambiguous as to what 'it' refers to."**

**15. Non-Responsive Witness**
Sometimes a witness's reply is too vague and doesn't give the details the attorney is asking for, or she/he "forgets" the event in question. This is often purposefully used by the witness as a tactic to prevent some particular evidence from being brought forth.

Form of Objection: **"Objection, your honor. The witness is being non-responsive."**

**16. Outside the Scope of Cross-Examination**
Re-direct examination is limited to issues raised by the opposing attorney on cross-examination. If an attorney asks questions beyond the issues raised on cross, opposing counsel may object to them.

Form of objection: **"Objection, your honor. Counsel is asking the witness about matters that did not come up in cross-examination."**

## SUMMARY OF ALLOWABLE EVIDENTIARY OBJECTIONS FOR THE 1999-2000 CALIFORNIA MOCK TRIAL

1. **Facts in Record:** "Objection, your honor. The answer is creating a material fact which is not in the record," or "Objection, your honor. The question seeks testimony which goes beyond the scope of the record."

2. **Relevance:** "Objection, your honor. This testimony is not relevant to the facts of this case. I move that it be stricken from the record," or "Objection, your honor. Counsel's question calls for irrelevant testimony."

3. **Foundation:** "Objection, your honor. There is a lack of foundation."

4. **Personal Knowledge:** "Objection, your honor. The witness has no personal knowledge to answer that question," or "Your honor, I move that the witness's testimony about _____ be stricken from the case because the witness has been shown not to have personal knowledge of the matter."

5. **Character:** "Objection, your honor. Character is not an issue here," or "Objection, your honor. The question calls for inadmissible character evidence."

6. **Opinion:** "Objection, your honor. The question calls for inadmissible opinion testimony (or inadmissible speculation) on the part of the witness."

7. **Expert Opinion:** "Objection, your honor. There is lack of foundation for opinion testimony," or "Objection, your honor. The witness is improperly testifying to defendant's mental state in issue."

8. **Hearsay:** "Objection, your honor. Counsel's question calls for hearsay," or "Objection, your honor. This testimony is hearsay. I move that it be stricken from the record."

9. **Leading Question:** "Objection, your honor. Counsel is leading the witness."

10. **Compound Question:** "Objection, your honor, on the ground that this is a compound question."

11. **Narrative:** "Objection, your honor. Counsel's question calls for a narrative."

12. **Argumentative Question:** "Objection, your honor. Counsel is being argumentative," or "Objection, your honor. Counsel is badgering the witness."

13. **Asked and Answered:** "Objection, your honor. This question has been asked and answered."

14. **Vague and Ambiguous:** "Objection, your honor. This question is vague and ambiguous as to _____."

15. **Non-Responsive:** "Objection, your honor. The witness is being non-responsive."

16. **Outside Scope of Cross:** "Objection, your honor. Counsel is asking the witness about matters that did not come up in cross examination."

## Lesson 1. Hazing

**ACTIVITY – Part 1:** Divide the class into groups of four (4). Using the examples below, determine if the activity is subtle hazing, harassment hazing, or not hazing at all. In addition, determine if California law prohibits the activity. As a class, tally the results for each group's decisions.

- Calling a pledge "pledgie" or any other demeaning name
- Giving demerits to pledges
- Verbal abuse to pledges
- Requiring pledges to perform personal services (carrying books, running errands, etc.)
- Making freshmen carry the bat bag on baseball team
- Requiring pledges to address members as Mr., Miss, etc.
- Deprivation of privileges
- Making freshmen sing school fight song in cafeteria
- Requiring freshmen to wear beanies at school
- Allowing freshmen to be "sold" as slaves at auction
- Requiring pledges to drink alcohol as part of initiation

**ACTIVITY – Part 2:** In groups of four, students assume the role of the officers of a new social club on campus. Develop a set of by-laws and a process for initiation of new members that will not include hazing. Share the recommendations with the class.

## Lesson 3. Search & Seizure – History of the General Warrant

**For Discussion and Writing**

1. The following is an excerpt from a speech given by William Pratt the Elder to Parliament in 1766. Based on his words, would Pratt have been a supporter or an opponent of general warrants? Why?

   *"The poorest man may, in his cottage, bid defiance to all the forces of the crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the king of England may not enter; all his force dares not cross the threshold of the ruined tenement."*

2. What does the phrase "a man's house is his castle" mean? Was a man's house his castle in old England? Why or why not?

3. Give two specific arguments that John Wilkes could make against the general warrant. Then give two specific arguments that Lord Halifax could make for the general warrant. Which do you find more persuasive? Why?

**ACTIVITY: WHAT'S WRONG WITH THIS WARRANT?**

Form five small groups. Members of the groups should first carefully read the Fourth Amendment of the American Bill of Rights.

*"The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

Next, the group members should read the warrant printed below looking for any violations of the Fourth Amendment. Each group should make a list of Fourth Amendment violations and be prepared to discuss them with the rest of the class.

**WARRANT**

To any sheriff, policeman, or peace officer in the county: Proof having been made before me under oath by *Officer Charles Paxton* that there is probable cause to believe stolen property may be found at the location described below, you are hereby commanded to search the residences in the south side of this city. You are further commanded to seize any objects or papers you believe might be connected with thefts that have occurred in this city. You are also authorized by me to use whatever means you believe are necessary to uncover stolen property that may be hidden in the residences described above. You are finally commanded to arrest any person who you believe may be a criminal. -- *Judge of the Court*

**Questions For Discussion**

1. There are probably five important things wrong with this arrest warrant. A reporter from each group should identify one problem and explain why it violates the Fourth Amendment.

2. Why is it important to "particularly" (specifically) describe places, things and persons on search and arrest warrants?

**Follow-up Exercise**

Groups should rewrite the warrant so that it meets the requirements of the Fourth Amendment.

## RULES OF THE COMPETITION

**NOTE: At the first meeting of the Mock Trial team, the Code of Ethics appearing on page 1 should be read and discussed by students and their teacher.**

### I. ELIGIBILITY

**To participate in the State Finals in Sacramento (March 31- April 2, 2000), each county must implement the following procedures:**

1. A county Mock Trial coordinator must be identified (usually through the county office of education).

2. Working in conjunction with CRF, the coordinator must plan and carry out a formal competition involving teams from at least two separate senior high schools in the county. These schools must be identified to CRF no later than **Friday, December 17, 1999**.

3. If a team is the only team from a county in which no county competition is conducted, the team will still be eligible for the State Finals. We STRONGLY recommend that such teams participate in the competition of another county to afford the team an opportunity to improve their skills.

4. All local county competitions must be completed by **March 1, 2000**.

5. A teacher/sponsor and attorney coach volunteer must be identified for each team by the coordinator.

6. Team withdrawals: Any team that withdraws from a local competition will receive a monetary refund **only** if the county coordinator is notified before the first round of trials **and** all 22 case packets are returned to CRF intact.

7. All team members must be eligible under school district and state rules applicable to involvement in extracurricular activities. All team members must be registered at the school for which they are competing and be a member of the team at the time of both their county and the state competition.

8. Home-schooled students may participate in the Mock Trial Program in one of two ways:
   1. as a member of the team at the public school she/he would attend if not home-schooled, or
   2. as a member of an independent team exclusively comprised of home-schooled students.

9. Two small schools may join together to form a single Mock Trial team **if neither school had a pre-existing Mock Trial Program**. For the purposes of the California Mock Trial Program, a "small" high school is one with 150 or fewer enrolled high school students. Such combination teams are eligible to represent their counties at the State Finals.

**The Mock Trial Team**

1. A Mock Trial team must consist of a minimum of 9 students and may include up to a maximum of 20 students, all from the same school. At the local level, more students may be involved as jurors, but juries will not be used at the State Finals. At the State Finals, the mock trial is presented as a bench trial. We encourage you to use the maximum number of students allowable, especially at schools with large student populations.

2. Team Structure —Involvement of all possible team members in the presentation of the case is reflected in the team performance/participation score. The team consists of the following members:
   Two (2) Pretrial Motion Attorneys—one for the motion and one against the motion (maximum). Pretrial attorneys may not serve as trial attorneys during the same round.

   Three (3) Trial Attorneys for Prosecution (maximum)

   Three (3) Trial Attorneys for Defense (maximum)

   Four (4) Witnesses for Prosecution (all four must be called in one trial)

   Four (4) Witnesses for Defense (all four must be called in one trial)

   One (1) Clerk

   One (1) Bailiff

   Teams may have alternates listed on the roster, with a maximum of 20 students participating as performers and alternates.

   We encourage you to use the maximum number of student attorneys. It is highly recommended that different trial attorneys conduct the opening argument and the closing argument, and that each trial attorney conduct at least one direct examination and one cross- examination.

   We also encourage you to involve as many students as possible in support roles, such as researchers, understudies, and photographers.

   Courtroom Artists: If your county participates in the Courtroom Art Contest, the team's artist is an official team member, but is not counted toward the 20-student limit.

## II. CONDUCT OF THE PRETRIAL MOTION

**Note: The pretrial motion (oral arguments only) is a mandatory part of the Mock Trial competition at the state level.**

1. Only the fact situation on pages 10-11, the witness statements on pages 22-32, and the legal sources on pages 14-20 can be used for the purposes of the pretrial motion.

2. Each student arguing a pretrial motion has four minutes to present a statement and two minutes for rebuttal. During these proceedings, students must be prepared to answer questions from the judge to clarify their position(s).

3. Each attorney is expected to display proper courtroom decorum and courtesy.

4. In order to present a position in the most persuasive manner, students should carefully review and become familiar with the materials provided in this packet. Additional background research may supplement their understanding of the constitutional issues at hand, but such supplemental materials may not be cited in arguments.

5. No written pretrial motion memoranda may be submitted to judges at local or state levels.

6 The only motion allowed for the purposes of the competition is the pretrial motion outlined in this case packet, pages 13-21.

7. At the State Finals, there will be 30 seconds provided at the end of the pretrial motion for one student attorney from each performing team to confer with the team's attorney coach and teacher sponsor. The student attorney from each team will then have 30 seconds to orally note to the court any irregularities regarding the Rules of Competition, which the team would like the judge and scorers to be aware of. This time should not to be used to argue additional points of law or rebut opponent's argument. Regarding questions of rule violations, the judge's decision will be the final.

## III. CONDUCT OF THE TRIAL

1. All participants are expected to display proper courtroom decorum and courtesy.

2. **Costumes and theatrical makeup are prohibited. In keeping with the educational philosophy and objectives of the Mock Trial program, teams should concentrate on presenting the trial in a realistic manner, with witnesses wearing appropriate courtroom attire and using realistic accents. Portrayals of racial or ethnic stereotypes are inappropriate and should not be used. At the State Finals, all scorers and presiders will be directed to disregard accents for scoring purposes.**

3. The judge is the ultimate authority throughout the trial. If there is a rule infraction, it is solely the student attorneys' responsibility to bring the matter to the judge's attention before a verdict is rendered. There will be no bench conferences allowed. The judge will determine if a rule was, in fact, violated. Her/his word is final. The bailiff **must have** a copy of the rules of competition for reference. Unless a specific point deduction for a particular infraction is provided in these rules, each scorer will determine the appropriate amount of deduction individually.

4. Teachers and attorney coaches must identify themselves to the judge before the trial begins. Teacher sponsors and attorney coaches are to remain in the courtroom throughout the trial. Teams are required to submit award nomination/team roster forms (pages 77-78) to presiding judges and scoring attorneys at all rounds of the State Finals. No other materials may be furnished to the presiding judges or scoring attorneys by student team members, teachers, or attorney coaches.

5. Gender-neutral names allow students of either gender to play the role of any witness. Any question regarding the defendant's gender, race, or physical characteristics not included in the official case materials is not allowed.

6. All team members participating in a trial must be in the courtroom at the appointed time, ready to begin the round. Incomplete teams must begin the trial without their other members or with alternates. The presider will determine if late arrivals may participate.

7. Although witnesses are excluded from the trial proceedings in actual trials, for educational purposes witnesses in the Mock Trial Competition will remain in the courtroom for the entire trial, in designated seating at the front of the courtroom. Once the trial has begun, contact is prohibited between a witness and **any** other team member, teacher, parent or school representative.

8. Once the trial has begun, there must be no spectator contact with student team members, whether in the hallway or the courtroom. Sponsors, teacher and attorney coaches, other team members, and spectators may not talk, signal, or otherwise communicate with the students. There will be an automatic deduction of **five points per score sheet** if the judge finds that this rule has been violated or if such conduct is observed by Mock Trial staff.

9. Recesses will not be allowed in local or state competitions for any reason.

10. The fact situation and the witness statements are the official case materials and comprise the sole source of information for testimony. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. A witness may testify only to facts stated in or reasonably inferred from her/his witness statement or the fact situation (if she/he reasonably would have knowledge of those facts).

11. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. A witness can be impeached if she/he contradicts the material contained in her/his witness statement using the procedures as outlined on page 42.

12. All witnesses must be called. Cross-examination is required for all witnesses. If the direct examination team runs out of time without calling one or more witnesses, the cross-examination team will be automatically awarded five points for each witness not called, and the direct examination team will automatically receive a score of zero for the witness performance and direct examination for each witness not called. No other witnesses may be called. If the cross-examination team runs out of time, the team will receive a cross-examination score of zero for each witness not cross-examined.

13. Prosecuting attorneys must provide the physical evidence listed under the heading "Evidence" in the case materials. No other physical evidence, if any, will be allowed (see stipulation 8, page 12). Additional charts or visual aids will not be allowed. Whether a team introduces, uses, and moves the physical evidence into evidence is entirely optional, but all physical evidence must be available at trial for either side to use. (See "Evidence" page 12.) If the prosecution team fails to bring physical evidence to court, it may be reflected in the team performance/participation score.

14. Attorneys may conduct re-direct examination when appropriate.

15. Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony.

16. Attorneys may use notes while presenting their cases. Witnesses are not allowed to use notes when testifying.

17. The Mock Trial Competition proceedings are governed by the "Mock Trial Simplified Rules of Evidence" on pages 45-52. Only specified types of objections will be recognized in the competition. Other more complex rules may not be used at the trial. Legal motions not outlined in the Official Materials will not be allowed.

18. There are no objections allowed during opening or closing arguments. (It will be the judge's responsibility to handle any legally inappropriate statements made in the closing, while scorers will also keep in mind the closing argument criteria.) One minute of this time may be used for rebuttal to opponent's closing argument. Only issues that were addressed in an opponent's closing argument may be raised during rebuttal. Formal reservation of rebuttal time will not be required at the State Finals.

19. You can only video/audio-tape a trial involving your school. Please check with your local Mock Trial coordinator regarding guidelines for video/audio-taping your competition. **Videotaping is for educational purposes only, and videotapes should not be shared with any other team before the State Finals without the permission of both teams videotaped. At the State Finals, videotaping is allowed in a courtroom only by the teams performing in that courtroom. CRF will NOT accept any videotape for complaint purposes.**

20. The official diagram establishes only relative positions. Because the scale is approximate, the diagram cannot be used to definitively establish distances. The issue of distances should be based on the witnesses' testimony and is a matter of fact for presiders.

21. At the State Finals, there will be 30 seconds provided at the end of the trial for one student attorney from each performing team to confer with the team's attorney coach and teacher sponsor. The student attorney from each team will then have 30 seconds to orally note to the court any irregularities regarding the Rules of Competition, which the team would like the judge and scorers to be aware of. This time should not to be used to argue additional points of law or rebut opponent's closing argument. Regarding questions of rule violations, the judge's decision will be the final.

22. Tie Breakers: At the State Finals, any tie will be broken by the presider's independent selection of the winning team. At local competitions, counties may use this procedure or select a different one.

## IV. REASONABLE INFERENCES

1. Definition and Purpose. For the California Mock Trial Competition, a reasonable inference is defined as *non-material* information to which a witness testifies that is not included in "the Record" but reasonably relates to that witness's testimony.

2. Because of the contrived format of the Mock Trial Competition, the length and content of witness statements must be limited. Reasonable inferences can be used to respond to the inevitable content gaps in witness statements. However, it is each student's responsibility to work closely within the Record. Inferences and objections about those inferences should be minimized, and points may be deducted for interference with the trial.

3. The Record defined. The Record is the official source of information in the casebook for witness testimony. The Record includes a witness's own statement, all stipulations and exhibits, and any portion of the Fact Situation of which that witness reasonably would have knowledge.

4. Reasonable defined. In an effort to maintain a fair competition, an inference is only "reasonable," and therefore allowable, if it is neutral and does not create a material fact. Inferred information that is material and pivotal to the facts at issue is by definition unreasonable, and as such is subject to objection (see objections, page 45).

5. Interpretation and enforcement. If an attorney believes an inference created an improper material fact, the attorney can make an objection for a "Fact Outside the Record" (see objections, page 45). The presider determines if the inference is reasonable or unreasonable and rules on the objection accordingly.

6. Examples. 1) Suppose your witness statement asserts that you left the Ajax Store and walked to your car, but gives no further details about the matter. You are asked whether you left the store through the Washington Avenue exit or the California Avenue exit. If this point is *not* a disputed or essential fact in the case, you could *reasonably infer* either exit as your answer. 2) On the other hand, if your witness statement asserts that someone fired a shot through your closed curtains into your living room. If asked whether you saw who shot the gun, you would have to answer, "No." You could not reasonably claim to have seen the person through a periscope on the roof or a tear in the curtains. This is an example of an *unreasonable inference*, one where the attorney's question and the witness's answer are attempting to create a material fact.

## V. TIMING

1. Each team will have 40 minutes to present its case, including the pretrial motion. If no pretrial motion is presented, total time is 34 minutes. Time limits for each section are as follows:

   Pretrial Motion ..... 6 minutes
   Opening Statement & Closing Argument ..... 10 minutes
   Direct & Re-direct Examination ..... 14 minutes
   Cross-Examination ..... 10 minutes

   The clock will be stopped for witnesses coming into the courtroom, attorneys making objections, and when judges are questioning attorneys and witnesses or offering their observations. The clock will not be stopped if witnesses are asked to approach the diagram or for other physical demonstrations. Time will not be rounded off.

   Teams may divide the 10 minutes for opening statement and closing arguments, the 14 minutes for direct and re-direct examination, and the 10 minutes for cross-examination as desired (e.g. 3 minutes opening, 7 minutes closing). The time may be utilized however they choose, but the maximum allowable totals for each category must be observed. One minute of this time may be used for rebuttal to opponent's closing argument.

2. Two- and one-minute verbal warnings must be given before the end of each category. The clerk will automatically stop students at the end of the allotted time for each section. Thus, there will be no allowance for overtime.

3. One defense attorney at the counsel table or the bailiff may serve as an unofficial timer. This unofficial timer must be identified before the trial begins and may check time with the clerk twice during the trial, once during the prosecution's case-in-chief and once during the presentation of the defense's case. Any objections to the clerk's official time must be made by this unofficial timer during the trial, before the verdict is rendered. The judge shall determine if there has been a rule violation and whether to accept the clerk's time or make a time adjustment. Individuals not participating in trial presentation may not serve as unofficial timers.

4. At the end of the pretrial motion and the trial, the clerk will time the 30-second consultations and any formal presentations regarding irregularities. No extensions of time will be granted.

## SUMMARY OF ORDER OF EVENTS FOR THE PRETRIAL MOTION AND TRIAL

### Pretrial Motion

The prosecution and defense may have only one pretrial attorney each, presenting the arguments and the rebuttal for their team.

We encourage presiders to challenge the attorneys with questions about the case law during pretrial arguments.

1. The hearing is called to order.

2. The judge asks the defense to summarize the arguments made in the motion. The defense has four minutes. The judge may interrupt to ask clarifying questions. The time spent answering the judge's questions is not included in the four-minute time limit.

3. The judge asks the prosecution to summarize arguments made in its opposition motion. The same conditions as in #2, above, apply to the prosecution.

4. The judge offers the defense two minutes of rebuttal time. The rebuttal time is used to counter the opponent's arguments. It is not to be used to raise new issues.

5. The judge offers the prosecution two minutes of rebuttal time. The same conditions as in #4, above, apply to the prosecution.

6. At the end of the oral arguments, the judge will rule on the motion.

7. Beyond having a direct effect on the charges, allowable evidence, and outcome of the trial, scores for the pretrial motion presentations will be added to each team's total scores in determining the winner of the trial.

### Trial

1. Attorneys present physical evidence for inspection.

2. Judge states charges against defendant.

3. Prosecution delivers its opening statement.

4. Defense may choose to deliver its opening statement at this point or may wait to open until the prosecution has completed its case in chief.

5. Prosecution calls its witnesses and conducts direct examination.

6. After each prosecution witness is called to the stand and has been examined by the prosecution, the defense cross-examines the witness.

7. After each cross-examination, prosecution may conduct re-direct examination of its own witnesses if necessary.

8. Defense delivers its opening statement (if it did not do so earlier).

9. Defense calls its witnesses and conducts direct examination.

10. After each defense witness is called to the stand and has been examined by the defense, the prosecution cross-examines the witness.

11. After each cross-examination, defense may conduct re-direct examination of its own witnesses if necessary.

12. Prosecution gives its closing argument.

13. Defense gives its closing argument.

14. Prosecution and defense may present rebuttal arguments (optional).

15. Judge deliberates and reaches verdict.

16. Verdict is announced in court. (No scores or winners are announced at this time.)

## SPECIAL INSTRUCTIONS FOR JUDGES AND ATTORNEYS

1. A student from each school will present a team roster before the trial to the judge and scoring attorney(s). This form will have names and designated trial roles. Please keep in mind Rule Section III, #15:

   > "Only the direct and cross-examination attorneys for a particular witness may make objections during that testimony."

2. Please ask team members (including teacher sponsors and attorney coaches) to introduce themselves before the trial.

3. Please fill in every box.

4. No fractions are allowed.

5. When filling out score sheets, **please make your decisions independently.** There can be no conferring.

6. The presiding judge is to fill out the top right corner of the score sheet, indicating which team she/he feels should be the overall winner in the event of a tie.

7. It is very important to read the fact situation and witness statements carefully. Because this is a **mock** trial, students will refer to specific facts and make references to certain pages in the text, and you need to be familiar with the pertinent details.

8. The official source of information for witness testimony includes a witness's own statement, all stipulations and exhibits, and any portion of the Fact Situation of which that witness reasonably would have knowledge. A witness may testify only to facts stated in or reasonably inferred from these official sources. The fact situation is a set of indisputable facts from which the attorneys may draw reasonable inferences. Reasonable inferences should be limited, and no material facts should be fabricated. Please keep in mind that witnesses can be impeached.

9. The witness statements contained in the packet should be viewed as signed statements made to the police by the witnesses. Witnesses can be impeached if they contradict the material contained in their witness statements. This rule is designed to limit, not eliminate the use of reasonable inference by providing a familiar courtroom procedure.

10. Costumes and theatrical makeup are prohibited. In keeping with the educational philosophy and objectives of the Mock Trial program, teams should concentrate on presenting the trial in a realistic manner, with witnesses wearing appropriate courtroom attire and using authentic accents.

11. Please keep in mind that the Mock Trial competition involves timed presentations. One team's unreasonable running of the opposing team's time is inappropriate. Witnesses may be admonished, and poor sportsmanship may be reflected in the team performance score.

## JUDGE'S ROLE

### Pretrial Motion and Constitutional Issues

The pretrial motion section of this packet contains materials and procedures for the preparation of a pretrial motion on an important constitutional issue. It is designed to help students learn about the legal process and legal reasoning. Students will learn how to draw analogies, distinguish a variety of fact situations, and analyze and debate constitutional issues. Although mandatory in the State Finals, the pretrial motion is **optional on the local level**. The county coordinator will inform you whether this will be part of the local competition. If it is, then the judge will read the "Pretrial Motion Instructions" on page 66 to the participants and the pretrial motion will be presented prior to the Mock Trial.

**The judge's ruling on the pretrial motion will have a direct bearing on the charges, allowable evidence, and the possible outcome of the trial. Please note that for the purposes of this mock trial, if the defense prevails at pretrial, Count 3 of the charges (Unlawful possession of an assault weapon) will be dropped.**

Also note that when the pretrial motion is included, the score is added to each team's score when determining the winner of the trial.

### Trial Proceedings: *People v. Rose*

To the fullest extent possible, please conduct the case as you would in an actual trial, familiarizing yourself with the case materials of *People v. Rose* before the trial. Although students will make errors, they must attempt to correct them as actual attorneys or witnesses would.

Please read the "Trial Instructions For Mock Trial Participants" on pages 66-67 of this packet to the students at the opening of the trial. Offering a few words of encouragement or insight into the trial process will help put the students at ease, and by **emphasizing the educational, rather than the competitive aspects** of the Mock Trial, you will help to bring the experience into proper perspective.

## INSTRUCTIONS FOR JUDGES TO READ TO PARTICIPANTS PRIOR TO MOCK TRIAL PROCEEDINGS

"To help the attorneys and me check the team rosters, would each of you please state your name and role? Attorneys, please identify the witnesses you will call to testify today. Now, would the teacher-sponsor and attorney coach for each team please identify themselves to the court?

## PRETRIAL MOTION INSTRUCTIONS FOR JUDGES TO READ TO PARTICIPANTS

"Both sides have four minutes to present their arguments. Defense will begin. I may interrupt to ask clarifying questions. Time spent answering my questions is not included in the four-minute time limit.

"At the conclusion of your arguments, each side will be offered two minutes of rebuttal time. Please remember that the rebuttal time is to be used to counter your opponent's arguments. It cannot be used to raise new issues.
"Under the rules of this competition, the same attorney presents the arguments and the rebuttal for her or his side.

"At the end of your presentations, I will rule on the motion.

"Please remember that according to the rules, the pretrial attorneys may not participate in the general trial presentation as trial attorneys.

"Scores for this pretrial motion presentation will be added to your total scores in determining the winner of the trial.

"Is counsel for the defense ready to begin?"

## TRIAL INSTRUCTIONS FOR JUDGES TO READ TO MOCK TRIAL PARTICIPANTS PRIOR TO THE BEGINNING OF THE TRIAL

"Presenting trial attorneys and the defendant should be seated at the prosecution and defense tables. Although witnesses are excluded from trial proceedings in actual trials, for educational purposes witnesses testifying today will remain in the courtroom for the entire trial, in designated seating at the front of the courtroom. Once the trial has begun, contact is prohibited between a witness and **any** other team member, teacher, parent or school representative.

"I must remind you that witness testimony is limited to information in the fact situation about which the witness would reasonably have knowledge, her/his own witness statement, and what can reasonably be inferred from that information. Reasonable inferences should be limited, and no material facts should be fabricated. Also, please keep in mind that witnesses can be impeached for testimony contradictory to their witness statements.

"You must complete your presentations within the specified time limits. The clerk will signal you as your time for each section of the presentation begins to run out. When your total time for each section runs out, you will be stopped, even if you have not finished.

"Attorneys must call four witnesses. Please remember that objections are limited to the 'Summary of Allowable Objections for the1999-2000 Mock Trial.'

"The following items may be offered as **evidence** at trial:

1. A faithful reproduction of the map of the crime scene, the Upper Picnic Area of Sunset Park, which appears in this packet. The reproduction should be no larger than 22" x 28".
2. A faithful reproduction of the search warrant for the Rose apartment, which appears in this packet. The reproduction should be no larger than 22" x 28".
3. A faithful reproduction of the screen saver from the Rose computer, which appears in this packet. The reproduction should be no larger than 22" x 28".

"Prosecution and defense **stipulate** to the following:
(You may opt to have the student attorneys read the stipulations for the record.)

1. According to California Health & Safety Code, Section 11057, Rohypnol is defined as a Schedule IV Drug.
2. Sam is being tried as an adult. The age of the defendant is not an issue in this trial.
3. Following Sam's arrest, all members of Sigma Zeta Zeta Pi were either suspended from school for violation of the school policy or had other disciplinary action taken against them, depending on the degree of their involvement in the hazing activities.
4. Cory and René are themselves under investigation for various criminal charges, including Education Code, Section 32051: Prohibition of Hazing (as defined in Section 32050). If the allegations are found true, both could be prosecuted criminally and/or administratively expelled from school. There were no discussions with the Prosecutor's Office about immunity.
5. All standard forensic procedures were followed in this investigation and there are no objections as to the chain of evidence.
6. No identifiable fingerprints were lifted from Cory or René's beer steins, the Roses' keyboard or the plastic bag in the defendant's home.
7. The form and service of the search warrant is proper and valid for the apartment entry and seizure of any illegal substances.
8. The steins and drugs are admitted as evidence; there is no need to physically introduce them in court.

"At the end of the trial I will render a verdict of guilty or not guilty in relation to the charges brought. The teams will be rated based on the quality of their performances, independent of my verdict.

"Before court is called to order, I would like to make reference to the Code of Ethics of the competition. I am assured you have all read and discussed its significance with your teachers, as well as signed a written agreement to follow this code.

"Barring unforeseen circumstances, no recesses will be called. If for any reason a recess is necessary, team members should remain in their appropriate places and should have no contact with spectators.

"If there are no questions, the trial will begin."

## SCORING CRITERIA FOR JUDGES AND ATTORNEYS

GUIDELINES FOR 0-5 SCORING METHOD

The following are general guidelines to be applied to each category on the scoresheet. They refer to both attorneys and witnesses. These guidelines provide a reasonable framework on which to base your judgment. It is strongly recommended that scorers use "3" as an indication of an average performance, and adjust higher or lower for stronger or weaker performances.

**0 PENALTY** — **Nonperformance of required presentation**
-Failure to conduct direct examination of a witness (no time)
-Failure to cross-examine a witness (no time)
-Can apply to rule violations

**1 FAR BELOW AVERAGE** — **Unacceptable performance**
-Disorganized
-Shows lack of preparation and poor understanding of task and rationale behind legal procedure.

**2 BELOW AVERAGE** — **Fair, weak performance**
-Inadequate preparation and understanding of task
-Awkward presentation

**3 AVERAGE** — **Meets required standards**
-Fundamental understanding of task and adequate preparation
-Acceptable but uninspired performance

**4 ABOVE AVERAGE** — **Good, solid performance**
-Demonstrated a more fully developed understanding of task and rationale behind legal procedure.

**5 EXCELLENT** — **Exceptional performance**
-Demonstrated superior ability to think on her/his feet
-Resourceful, original & innovative approaches
-Portrayal was both extraordinary and realistic, not overly rehearsed or memorized
-Witness examination and summation reflect the trial proceedings

### EVALUATION CRITERIA

Students are to be rated on the six-point scale for each category according to the following criteria appropriate to each presentation. **Points should be deducted if criteria are not met or are violated.** If the pretrial motion is presented, each team may be awarded a maximum of 115 points by each scorer and/or judge, and 100 points if it is not. NOTE: Some scores are weighted, and therefore can affect a team's score more dramatically. These include the pretrial motion (x3), the closing argument (x2), and team performance (x2).

**1. Pretrial Motion (x3)**

- Clear and concise presentation of issues with appropriate use of authorities.
- Well-developed, well-reasoned and organized arguments.
- Solid understanding of the legal reasoning behind the arguments.
- Responded well to judge's questions and maintained continuity in argument.
- Effective rebuttal countered opponent's argument.

**2. Opening Statement**

- Provided a clear and concise description of the anticipated presentation.

**3. Direct/Re-Direct Examination**

- Questions required straightforward answers and brought out key information for her/his side of the case.
- Attorney effectively responded to objections made.
- Attorney properly introduced exhibits and, where appropriate, properly introduced evidence as a matter of record.
- Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Attorney made **effective** objections to cross-examination questions of her/his witness when appropriate. Attorney did not make **unnecessary** objections.
- Throughout questioning, attorney made appropriate use of her/his time.
- Attorney used **only** those objections listed in the summary of evidentiary objections.

**4. Cross-Examination**

- Attorney made **effective** objections to direct examination (of the witness she/he cross-examined) when appropriate. Attorney did not make **unnecessary** objections.
- Attorney properly phrased and rephrased questions and demonstrated a clear understanding of trial procedures.
- Attorney exposed contradictions in testimony and weakened the other side's case.

**5. Witnesses**

- Witness was believable in her/his characterizations and presented convincing testimony.
- Witness was well prepared for answering the questions posed to her/him under direct examination and responded well to them.
- Witness responded well to questions posed under cross-examination without unnecessarily disrupting or delaying court proceedings.
- Witness testified to key facts in a consistent manner and avoided irrelevant comments.
- Witness did not disrupt the trial with unreasonable inferences.

**6. Closing Argument (x2)**

- Attorney's performance contained elements of spontaneity and was not based entirely on a prepared text.
- Attorney incorporated examples from the actual trial, while also being careful **not** to introduce statements and evidence that were not brought out in her/his particular trial.
- Attorney made an organized and well-reasoned presentation summarizing the most important points for her/his team's side of the case.
- If and when questioned by the judge, attorney gave well-reasoned, coherent answers.
- Effective rebuttal countered opponent's arguments.

**7. Clerk and Bailiff**

- The clerk or bailiff was present and punctual for trial.
- The clerk or bailiff performed her/his role so that there were no disruptions or delays in the presentation of the trial.

**8. Team (x2)**

- Team members were courteous, observed general courtroom decorum, and spoke clearly and distinctly.
- Team members displayed good sportsmanship to all competitors, regardless of trial results.
- **All** team members were involved in the presentation of the case and actively participated in fulfilling their respective roles.
- As much as possible, **each** trial attorney displayed examination and argumentation skills, and when appropriate, displayed knowledge of Simplified Rules of Evidence in making objections.
- Witnesses performed in synchronization with attorneys in presenting their side of the case.
- Team members demonstrated cooperation and teamwork.
- **The behavior of teachers and attorney coaches may also impact team performance score.**

## MOCK TRIAL SCORING & POWER MATCHING SYSTEM

At State Finals, team rankings are calculated based on the following percentage and win-loss system in an effort to eliminate the artificial highs and lows inherent in any numeric scoring system. (See explanation below.) On the local level, counties are free to implement this scoring system or another of their choice.

### Round 1

| Trial 1 | | | Trial 2 | | |
|---|---|---|---|---|---|
| **Teams** | **Raw Scores** | **% of Total Points Given** | **Teams** | **Raw Scores** | **% of Total Points Given** |
| **AARIN'S TEAM** | | | **JAMES' TEAM** | | |
| Scorer 1 | 90 | | Scorer 1 | 91 | |
| Scorer 2 | 95 | | Scorer 2 | 93 | |
| Scorer 3 | 85 | | Scorer 3 | 89 | |
| **TOTAL** | 270 | 54.5% | **TOTAL** | 273 | 49.9% |
| **EDEN'S TEAM** | | | **LOURDES' TEAM** | | |
| Scorer 1 | 90 | | Scorer 1 | 88 | |
| Scorer 2 | 65 | | Scorer 2 | 92 | |
| Scorer 3 | 70 | | Scorer 3 | 94 | |
| **TOTAL** | 225 | 45.5% | **TOTAL** | 274 | 50.1% |
| | | | | | |
| TRIAL 1 TOTALS | 495 | 100% | TRIAL 2 TOTALS | 547 | 100% |

Ranking of Round 1 Results and Matching for Round 2

**Pure Power Matching**

Aarin's Team – 54.5%
Lourdes' Team – 50.1%
James' Team – 49.9%
Eden's Team – 45.5%

**Power Matching Within Win-Loss Records**

1 Win – 0 Losses
Aarin's Team – 54.5%
Lourdes' Team – 50.1%

0 Wins – 1 Loss
James' Team – 49.9%
Eden's Team – 45.5%

Using a pure power matching system (above left), Round 2 matching would be based only on percentages. Because of the need to alternate prosecution and defense designations between Rounds 1 and 2, pure power matching is not always used.

Additionally, when a random draw is used for Round 1 matching, it is possible that the ranking could be skewed by disproportionate percentages. For instance, a trial between two balanced teams could result in low percentages (as with James and Lourdes), while a trial between an average team and a new, very inexperienced team could result in widely disproportionate percentages (like Aarin and Eden).

In order to ensure that all teams are fairly assessed, ranking is based on both percentages and win-loss records (above right).

## Round 2

| Trial 3 | | | Trial 4 | | |
|---|---|---|---|---|---|
| **Teams** | **Raw Scores** | **% of Total Points Given** | **Teams** | **Raw Scores** | **% of Total Points Given** |
| **AARIN'S TEAM** | | | **EDEN'S TEAM** | | |
| Scorer 1 | 100 | | Scorer 1 | 85 | |
| Scorer 2 | 98 | | Scorer 2 | 82 | |
| Scorer 3 | 95 | | Scorer 3 | 89 | |
| **TOTAL** | 293 | 51.7% | **TOTAL** | 256 | 49.6% |
| **LOURDES' TEAM** | | | **JAMES' TEAM** | | |
| Scorer 1 | 95 | | Scorer 1 | 93 | |
| Scorer 2 | 90 | | Scorer 2 | 87 | |
| Scorer 3 | 89 | | Scorer 3 | 80 | |
| **TOTAL** | 274 | 48.3% | **TOTAL** | 260 | 50.4% |
| | | | | | |
| TRIAL 3 TOTALS | 567 | 100% | TRIAL 4 TOTALS | 516 | 100% |

Round 2 Ranking

**Win/Loss & Cumulative Percentages**

2 Wins – 0 Losses
Aarin's Team – 106.2%

1 Win – 1 Loss
James' Team – 100.3%
Lourdes' Team – 98.4%

0 Wins – 2 Losses
Eden's Team – 95.1%

**NOTE: At the State Finals, the power-matching system may be modified at the discretion of CRF Staff to assure balanced presentations of prosecution and defense arguments.**

Constitutional Rights Foundation's California Mock Trial Competition
**Judge/Attorney Score Sheet**

Motion: Granted / Denied
Verdict: Count #1 G / NG #2 G / NG #3 G / NG

Presider's Tie Breaker _____

Scorer's Name _____ Presider's Name _____

Please refer to the guidelines and the evaluation criteria in your Mock Trial case packet to assist you in evaluating the performances. The judge's verdict should have no bearing on your scoring decisions. **Do not** announce any winners or scores at the end of this trial. Do not confer with anyone regarding scores. **FILL IN ALL SCORE BOXES AND DO NOT USE FRACTIONS WHEN SCORING.** Please indicate the verdict by circling the appropriate letters above.

0=Penalty 1=Far Below Average 2=Below Average 3=Average 4=Above Average 5=Excellent

PROSECUTION _____ DEFENSE _____

| | | PROSECUTION | DEFENSE | STUDENT'S NAME |
|---|---|---|---|---|
| PRETRIAL MOTION | (Defense presents) | ☐ x3=___ | ☐ x3=___ | _____ _____ |
| OPENING STATEMENTS | | ☐ | ☐ | _____ _____ |
| PROSECUTION'S FIRST WITNESS | Direct/Re Exam by Attorney | ☐ | | _____ |
| | Cross-Exam by Attorney | | ☐ | _____ |
| | Witness Performance | ☐ | | _____ |
| PROSECUTION'S SECOND WITNESS | Direct/Re Exam by Attorney | ☐ | | _____ |
| | Cross-Exam by Attorney | | ☐ | _____ |
| | Witness Performance | ☐ | | _____ |
| PROSECUTION'S THIRD WITNESS | Direct/Re Exam by Attorney | ☐ | | _____ |
| | Cross-Exam by Attorney | | ☐ | _____ |
| | Witness Performance | ☐ | | _____ |
| PROSECUTION'S FOURTH WITNESS | Direct/Re Exam by Attorney | ☐ | | _____ |
| | Cross-Exam by Attorney | | ☐ | _____ |
| | Witness Performance | ☐ | | _____ |
| DEFENSE'S FIRST WITNESS | Direct/Re Exam by Attorney | | ☐ | _____ |
| | Cross-Exam by Attorney | ☐ | | _____ |
| | Witness Performance | | ☐ | _____ |
| DEFENSE'S SECOND WITNESS | Direct/Re Exam by Attorney | | ☐ | _____ |
| | Cross-Exam by Attorney | ☐ | | _____ |
| | Witness Performance | | ☐ | _____ |
| DEFENSE'S THIRD WITNESS | Direct/Re Exam by Attorney | | ☐ | _____ |
| | Cross-Exam by Attorney | ☐ | | _____ |
| | Witness Performance | | ☐ | _____ |
| DEFENSE'S FOURTH WITNESS | Direct/Re Exam by Attorney | | ☐ | _____ |
| | Cross-Exam by Attorney | ☐ | | _____ |
| | Witness Performance | | ☐ | _____ |
| CLERK (Prosecution) | BAILIFF (Defense) | ☐ | ☐ | |
| CLOSING ARGUMENTS | | ☐ x2=___ | ☐ x2=___ | _____ _____ |
| PARTICIPATION AND TEAM PERFORMANCE | | ☐ X2=___ | ☐ X2=___ | |
| TOTAL | | _____ | _____ | |

BEST COPY AVAILABLE

## TEAM ROSTER SHEET

**TEACHERS ARE REQUIRED TO SUBMIT COMPLETED ROSTERS TO JUDGES AND SCORERS BEFORE TRIAL BEGINS**

| Prosecution | Defense |
|---|---|
| Pretrial Motion Attorney: | Pretrial Motion Attorney: |
| Trial Attorneys: | Trial Attorneys: |
| Witness #1<br>Role:<br>Name of Student: | Witness #1<br>Role:<br>Name of Student: |
| Witness #2<br>Role:<br>Name of Student: | Witness #2<br>Role:<br>Name of Student: |
| Witness #3<br>Role:<br>Name of Student: | Witness #3<br>Role:<br>Name of Student: |
| Witness #4<br>Role:<br>Name of Student: | Witness #4<br>Role:<br>Name of Student: |
| Clerk: | Bailiff: |
| Courtroom Artist: | Courtroom Artist: |

## CALIFORNIA MOCK TRIAL TIME SHEET

Clerk _____ Judge _____ Date _____

_____ V. _____

Prosecution School | Defense School

**INSTRUCTIONS:**

**Mark the exact time in the appropriate blank. Do not round off. For direct, cross, and re-direct examination, record only the time spent by attorneys asking or witnesses answering questions. Stop the clock (do not time) when:**

- **witnesses enter the courtroom;**
- **attorneys make objections;**
- **judges question attorneys or make observations from the bench.**

| **PROSECUTION:** | | **DEFENSE:** | |
|---|---|---|---|
| **Opening** (see below)** | _____ | **Opening** (see below)** | _____ |
| **DIRECT/RE-DIRECT EXAM** (14 MIN) | | **CROSS-EXAM** (10 min.) | |
| Prosecution Witness 1 | ___/___ | Prosecution Witness 1 | _____ |
| Prosecution Witness 2 | ___/___ | Prosecution Witness 2 | _____ |
| Prosecution Witness 3 | ___/___ | Prosecution Witness 3 | _____ |
| Prosecution Witness 4 | ___/___ | Prosecution Witness 4 | _____ |
| **DIRECT/RE-D SUB-TOTAL** | _____ | **CROSS-EXAM SUB-TOTAL** | _____ |
| **CROSS-EXAM** (10 min.) | | **DIRECT/RE-DIRECT EXAM (14 min.)** | |
| Defense Witness 1 | _____ | Defense Witness 1 | ___/___ |
| Defense Witness 2 | _____ | Defense Witness 2 | ___/___ |
| Defense Witness 3 | _____ | Defense Witness 3 | ___/___ |
| Defense Witness 4 | _____ | Defense Witness 4 | ___/___ |
| **CROSS-EXAM SUB TOTAL** | _____ | **DIRECT/RE-D SUB-TOTAL** | _____ |
| STATEMENTS** (10 min.) | | STATEMENTS** (10 min.) | |
| Opening** (from above) | _____ | Opening** (from above) | _____ |
| Closing** | _____ | Closing** | _____ |
| Rebuttal** (1 min. max.) | _____ | Rebuttal** (1 min. max.) | _____ |
| **STATEMENTS SUB-TOTAL** | _____ | **STATEMENTS SUB-TOTAL** | _____ |
| **TOTAL TRIAL TIME** | _____ | **TOTAL TRIAL TIME** | _____ |

**** OPENING + CLOSING + REBUTTAL = 10 MINUTES TOTAL**

**Constitutional Rights Foundation's**
**California Mock Trial Competition**

**Pretrial Motion Time Sheet**

_____ V. _____
Defense - School Prosecution - School

Clerk_____

School _____

| DEFENSE | PROSECUTION |
|---|---|
| Statement _____<br><br>(four minutes, **excluding** time judge asks questions and attorney answers them.) | Statement _____<br><br>(four minutes, **excluding** time judge asks questions and attorney answers them.) |
| Rebuttal _____<br><br>(two minutes, **excluding** time judge asks questions and attorney answers them.) | Rebuttal _____<br><br>(two minutes, **excluding** time judge asks questions and attorney answers them.) |
| TOTAL TIME | TOTAL TIME |

**NOTE:** Give one-minute warnings before the end of **each** section.

**Do not round off times.**

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**Constitutional Rights Foundation gratefully acknowledges the Daily Journal Corporation for its generous contribution of the printing of the Official Materials for the California Mock Trial Program.**

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